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DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Parts 800 and 810

United States Standards for Barley

AGENCY: Grain Inspection Packers and Stockyards Administration, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA), Grain Inspection, Packers and Stockyards Administration (GIPSA) is revising the U.S. Standards for Barley (barley standards) under the United States Grain Standards Act (USGSA) by revising the definitions of other terms to remove Six-rowed Blue Malting barley and the reference to kernels with white aleurone layers. Further, GIPSA is revising the barley standards to add the factors injured-by mold and mold-damaged kernels to the subclass Six-rowed Malting barley. Finally, GIPSA is revising the grade requirements for Two-rowed Malting Barley and Six-rowed Malting barley, and removing those for Six-rowed Blue Malting barley.

DATES: This rule is effective August 1, 2018.

FOR FURTHER INFORMATION CONTACT: Barry Gomoll, 202–720–8286. Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Background

Barley is defined in the U.S. Standards for Barley as grain that, before the removal of dockage, consists of 50 percent or more of whole kernels of cultivated barley (*Hordeum vulgare* L.) and not more than 25 percent of other grains for which standards have been established under the USGSA (7 U.S.C. 71–87k). The term ''barley'' as used in these standards does not include hull-less barley or black barley.

In 2015, U.S. barley producers harvested 3.1 million acres of barley, producing 214.3 million bushels of the grain. Beer production in the United States accounts for approximately 56 percent of total domestic use; feed and industrial uses account for about 36 percent of domestic use; and whiskey, food and seed account for about 8 percent of domestic use (2005–2014 average). Barley is also exported for feed and malting purposes, typically accounting for less than five percent of total barley usage.

Section 76 of the USGSA authorizes GIPSA to establish and maintain the standards for barley and other grains regarding kind, class, quality, and condition (7 U.S.C. 76(a)). The barley standards facilitate the marketing of barley, define U.S. barley quality, and define commonly used industry terms in the domestic and global marketplace. Also, the barley standards contain basic principles such as the basis of determination used for a particular quality factor analysis, as well as specify grades, grade requirements, special grades, and special grade requirements. The barley standards were established on August 24, 1926, were last revised in 1997, and appear in the USGSA regulations at 7 CFR 810.201 through 810.207.

Changes to Barley Standards

This final rule makes several revisions to the barley standards. The term ''Blue Malting barley'' and references to kernels with white aleurone layers are being removed from the definitions and the subclass Six-rowed Blue Malting barley is being removed from the barley standards (7 CFR 810.202 and 810.204). These references are being removed because (1) blue aleurone barley is no longer used by the malting and brewing industry in the United States, (2) no blue aleurone malting varieties are grown for export, and (3) United States production of blue aleurone malting barley is minimal.

Further, the grade requirement tables for Six-rowed Malting barley and Two-rowed Malting barley are being harmonized to have the same grade limits for all factors except for test weight and thin barley.

The following changes are being made to the grade requirements for Six-rowed Malting barley:

- The minimum limit for barley of suitable malting types for grade numbers 1 and 2 is increased.
- The minimum percentage of sound barley for all grades is increased.
- Maximum limits of wild oats are added to all grades.

The following changes are being made to the grade requirements for Two-rowed Malting barley:

- Maximum limits of damaged kernels are added to all grades.
- Maximum limits of other grains are added to all grades.
- The maximum limits for skinned and broken kernels are lowered for grade numbers 1, 2, and 3.

Along with the changes to the grade requirements, the definition of Six-rowed Malting barley is being revised to include limits for injured-by-mold kernels and mold-damaged kernels.

These changes are being made as the result of producer and industry comments in response to an Advance Notice of Proposed Rulemaking published on October 4, 2011, in the **Federal Register** (76 FR 61287). The comments stated that historical differences between six-rowed and two-rowed barley varieties have declined significantly and both classes are grown for the same uses. Commenters recommended that the standards for the classes should be harmonized with each other. The exceptions to this are the factors test weight and thin barley, for which genetic differences still exist between six-rowed and two-rowed varieties.

Inspection Plan Tolerances

Additionally, these changes to the grade standards make it necessary to update the tolerances for the inspection of shiplot, unit train, and lash barges in single lots. These types of lots are inspected using a statistically based inspection plan, which uses tolerances to allow slight deviation in quality. These tolerances, published in Table 1 and Table 2 of section 800.86(c)(2), are being updated to reflect the harmonization of the standards.

Proposed Rule Comment Review

On July 25, 2014, GIPSA issued a proposed rule requesting comments on proposed changes to the barley standards (79 FR 43281). GIPSA received two comments in response to this proposed rule.

One comment came from a malting barley industry group. The comment expressed agreement with the changes in the proposed rule, commenting that the changes in the barley standards provide consistency for barley trading and insurance purposes.

The other comment came from a farmer who grows wheat and barley. The comment expressed concern that, by adding limits for injured-by-mold and mold-damaged kernels to Six-rowed Malting barley, the proposed rule might impose more restrictions on growers of barley. Since mold is primarily a storage issue, these additions should not place any further burden on barley producers. Furthermore, the inclusion of these factors in the barley standards should allow crop insurance to cover losses to farmers in the event that mold damage does occur, protecting the farmers from rejection of their crop by buyers.

Effective Date

As specified in the USGSA (7 U.S.C. 76(b)), amendments to the standards cannot become effective less than 1 calendar year after public notification, unless in the judgment of the Secretary, the public health, interest, or safety require that they become effective sooner. Following this section of the USGSA, GIPSA has determined that it is in the public interest to make this final rule effective on August 1, 2018, in order to coincide with the start of the barley marketing year.

Executive Orders 12866 and 13771, and Regulatory Flexibility Act

This rule does not meet the definition of a significant regulatory action contained in section 3(f) of Executive Order 12866, and is not subject to review by the Office of Management and Budget (OMB). Additionally, because this rule does not meet the definition of a significant regulatory action it does not trigger the requirements contained in Executive Order 13771. *See* OMB's Memorandum titled ''Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017 titled 'Reducing Regulation and Controlling Regulatory Costs' '' (February 2, 2017). Under the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), GIPSA has considered the economic impact of this action on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. The Small Business Administration (SBA) defines small businesses by their North American Industry Classification System Codes (NAICS). This rule affects customers of GIPSA's official inspection and weighing services in the domestic and export grain markets such as grain elevators/merchants (NAICS 424510), those in the malt manufacturing industry (NAICS 311213), and official grain inspection agencies.

GIPSA is revising the barley standards in the Definitions of Other Terms by removing Six-rowed Blue Malting barley and the reference to kernels with white aleurone layers. In addition, the change adds injured-by-mold and mold-damaged kernels to the definition of Six-rowed Malting barley. The definition change also revises the grade and grade requirements for Two-rowed Malting barley. Further, the grade and grade requirements for Six-rowed Malting barley and Six-rowed Blue Malting barley are revised. Under the provisions of the USGSA, grain exported from the United States must be officially inspected and weighed. GIPSA provides mandatory inspection and weighing services at 45 export facilities in the United States and 7 facilities for U.S. grain transshipped through Canadian ports. Five delegated State agencies provide mandatory inspection and weighing services at 13 facilities. All of these facilities are owned by multi-national corporations, large cooperatives, or public entities that do not meet the requirements for small entities established by the SBA. Further, the regulations are applied equally to all entities. The USGSA (7 U.S.C. 87f–1) requires the registration of all persons engaged in the business of buying grain for sale in foreign commerce. In addition, those persons who handle, weigh, or transport grain for sale in foreign commerce must also register. Section 800.30 of the USGSA regulations (7 CFR 800.30) define a foreign commerce grain business as a person who regularly engage in buying for sale, handling, weighing, or transporting grain totaling 15,000 metric tons or more during the preceding or current calendar year. At present, there are 108 registrants registered to export grain. GIPSA believes that most of the 108 registrants are large businesses and very few are small businesses.

GIPSA also provides domestic and miscellaneous inspection and weighing services at other than export locations. Such services are provided by official state and private agencies. Approximately 217 different applicants receive domestic inspection services each year and approximately 150 different locations receive track scale tests as a miscellaneous service each year.

Most users of the official inspection and weighing services do not meet the requirements for small entities nor do the agencies that provide such services. Further, GIPSA is required by statute to make services available and to recover, as nearly as practicable, the costs of providing such services. There would be no additional reporting, record keeping, or other compliance requirements imposed upon small entities as a result of this rulemaking. Further, GIPSA has not identified any other Federal rules that may duplicate, overlap or conflict with this rulemaking. Therefore, GIPSA has determined that this rulemaking will not have a significant economic impact on a substantial number of small entities as defined in the RFA.

Executive Order 12988

This rulemaking has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. The USGSA provides in section 87g that no subdivision may require or impose any requirements or restrictions concerning the inspection, weighing, or description of grain under the USGSA. Otherwise, this rule would not preempt any State or local laws, or regulations, or policies unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Executive Order 13175

This rulemaking has been reviewed with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. GIPSA has received no requests for official services for barley from any Tribal Government. Therefore, GIPSA believes that this rule would not have substantial and direct effects on Tribal governments and would not have significant Tribal implications.

Paperwork Reduction Act

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements included in this rulemaking has previously been approved by the OMB under control number 0580–0013.

GIPSA is committed to complying with the Government Paperwork Elimination Act, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to maximum extent possible.

E-Government Compliance

GIPSA is committed to complying with the E-Government Act, to promote

the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects

7 CFR Part 800

Administrative practice and procedure, Conflict of interests, Exports, Freedom of information, Grains, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

7 CFR Part 810

Exports, Grain.

For reasons set out in the preamble 7 CFR parts 800 and 810 are amended as follows:

PART 800—GENERAL REGULATIONS

■ 1. The authority citation for part 800 continues to read as follows:

Authority: 7 U.S.C. 71–87k.

■ 2. In § 800.86, Table 1 and Table 2 in paragraph (c)(2) are revised to read as follows:

§ 800.86 Inspection of shiplot, unit train, and lash barge grain in single lots.

* * * * *

(c) * * *

(2) * * *

TABLE 1—GRADE LIMITS (GL) AND BREAKPOINTS (BP) FOR SIX-ROWED MALTING BARLEY

Grade	Minimum limits of—						Maximum limits of—											
	Test weight per bushel (pounds)		Suitable malting types (percent)		Sound barley [1] (percent)		Damaged kernels [1] (percent)		Wild oats (percent)		Foreign material (percent)		Other grains (percent)		Skinned and broken kernels (percent)		Thin barley (percent)	
	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP
U.S. No. 1	47.0	−0.5	97.0	−1.0	98.0	−0.8	2.0	0.8	1.0	0.6	0.5	0.1	2.0	0.8	4.0	1.1	7.0	0.6
U.S. No. 2	45.0	−0.5	97.0	−1.0	98.0	−0.8	3.0	0.9	1.0	0.6	1.0	0.4	3.0	0.9	6.0	1.4	10.0	0.9
U.S. No. 3	43.0	−0.5	95.0	−1.3	96.0	−1.1	4.0	1.1	2.0	0.8	2.0	0.5	5.0	1.3	8.0	1.5	15.0	0.9
U.S. No. 4	43.0	−0.5	95.0	−1.3	93.0	−1.1	5.0	1.3	3.0	0.9	3.0	0.6	5.0	1.3	10.0	1.6	15.0	0.9

[1] Injured-by-frost kernels and injured-by-mold kernels are not considered damaged kernels or considered against sound barley.

TABLE 2—GRADE LIMITS (GL) AND BREAKPOINTS (BP) FOR TWO-ROWED MALTING BARLEY

Grade	Minimum limits of—						Maximum limits of—											
	Test weight per bushel (pounds)		Suitable malting types (percent)		Sound barley [1] (percent)		Damaged kernels [1] (percent)		Wild oats (percent)		Foreign material (percent)		Other grains (percent)		Skinned and broken kernels (percent)		Thin barley (percent)	
	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP
U.S. No. 1	50.0	−0.5	97.0	−1.0	98.0	−0.8	2.0	0.8	1.0	0.6	0.5	0.1	2.0	0.8	4.0	1.1	5.0	0.4
U.S. No. 2	48.0	−0.5	97.0	−1.0	98.0	−0.8	3.0	0.9	1.0	0.6	1.0	0.4	3.0	0.9	6.0	1.4	7.0	0.5
U.S. No. 3	48.0	−0.5	95.0	−1.3	96.0	−1.1	4.0	1.1	2.0	0.8	2.0	0.5	5.0	1.3	8.0	1.5	10.0	0.9
U.S. No. 4	48.0	−0.5	95.0	−1.3	93.0	−1.1	5.0	1.3	3.0	0.9	3.0	0.6	5.0	1.3	10.0	1.6	10.0	0.9

[1] Injured-by-frost kernels and injured-by-mold kernels are not considered damaged kernels or considered against sound barley.

Note: Malting barley must not be infested in accordance with § 810.107(b) and must not contain any special grades as defined in § 810.206. Six- and two-rowed barley varieties not meeting the above requirements must be graded in accordance with standards established for the class Barley.

* * * * *

PART 810—OFFICIAL UNITED STATES STANDARDS FOR GRAIN

■ 3. The authority citation for part 810 continues to read as follows:

Authority: 7 U.S.C. 71–87k.

■ 4. In § 810.202, paragraph (c)(1) is revised to read as follows:

§ 810.202 Definition of other terms.

* * * * *

(c) * * *

(1) *Malting barley* is divided into the following two subclasses:

(i) *Six-rowed Malting barley* has a minimum of 95.0 percent of a six-rowed suitable malting type that contains not more than 1.9 percent injured-by-frost kernels, 0.4 percent frost-damaged kernels, 0.2 percent injured-by-heat kernels, 0.1 percent heat-damaged kernels, 1.9 percent injured-by-mold kernels, and 0.4 percent mold-damaged kernels. Six-rowed Malting barley must not be infested, blighted, ergoty, garlicky, or smutty as defined in § 810.107(b) and § 810.206.

(ii) *Two-rowed Malting barley* has a minimum of 95.0 percent of a two-rowed suitable malting type that contains not more than 1.9 percent injured-by-frost kernels, 0.4 percent frost-damaged kernels, 0.2 percent injured-by-heat kernels, 0.1 percent heat-damaged kernels, 1.9 percent injured-by-mold kernels, and 0.4 percent mold-damaged kernels. Two-rowed Malting barley must not be infested, blighted, ergoty, garlicky, or smutty as defined in § 810.107(b) and § 810.206.

* * * * *

■ 5. Section 810.204 is revised to read as follows:

§ 810.204 Grades and grade requirements for Six-rowed Malting barley.

Grade	Minimum limits of—			Maximum limits of—					
	Test weight per bushel (pounds)	Suitable malting types (percent)	Sound barley [1] (percent)	Damaged kernels [1] (percent)	Wild oats (percent)	Foreign material (percent)	Other grains (percent)	Skinned and broken kernels (percent)	Thin barley (percent)
U.S. No. 1	47.0	97.0	98.0	2.0	1.0	0.5	2.0	4.0	7.0
U.S. No. 2	45.0	97.0	98.0	3.0	1.0	1.0	3.0	6.0	10.0
U.S. No. 3	43.0	95.0	96.0	4.0	2.0	2.0	5.0	8.0	15.0
U.S. No. 4	43.0	95.0	93.0	5.0	3.0	3.0	5.0	10.0	15.0

[1] Injured-by-frost kernels and injured-by-mold kernels are not considered damaged kernels or considered against sound barley.

Note: Malting barley must not be infested in accordance with § 810.107(b) and must not contain any special grades as defined in § 810.206. Six-rowed Malting barley varieties not meeting the requirements of this section must be graded in accordance with standards established for the class Barley.

■ 6. Section 810.205 is revised to read as follows:

§ 810.205 Grades and grade requirements for Two-rowed Malting barley.

Grade	Minimum limits of—			Maximum limits of—					
	Test weight per bushel (pounds)	Suitable malting types (percent)	Sound barley [1] (percent)	Damaged kernels [1] (percent)	Wild oats (percent)	Foreign material (percent)	Other grains (percent)	Skinned and broken kernels (percent)	Thin barley (percent)
U.S. No. 1	50.0	97.0	98.0	2.0	1.0	0.5	2.0	4.0	5.0
U.S. No. 2	48.0	97.0	98.0	3.0	1.0	1.0	3.0	6.0	7.0
U.S. No. 3	48.0	95.0	96.0	4.0	2.0	2.0	5.0	8.0	10.0
U.S. No. 4	48.0	95.0	93.0	5.0	3.0	3.0	5.0	10.0	10.0

[1] Injured-by-frost kernels and injured-by-mold kernels are not considered damaged kernels or considered against sound barley.

Note: Malting barley must not be infested in accordance with § 810.107(b) and must not contain any special grades as defined in § 810.206. Six-rowed Malting barley and Six-rowed Blue Malting barley varieties not meeting the requirements of this section must be graded in accordance with standards established for the class Barley.

Mark C. Craig,

Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 2017–08942 Filed 5–2–17; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–452]

Schedules of Controlled Substances: Temporary Placement of 4-Fluoroisobutyryl Fentanyl into Schedule I

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Temporary scheduling order.

SUMMARY: The Administrator of the Drug Enforcement Administration is issuing this temporary scheduling order to schedule the synthetic opioid, *N*-(4-fluorophenyl)-*N*-(1-phenethylpiperidin-4-yl)isobutyramide (4-fluoroisobutyryl fentanyl or *para*-fluoroisobutyryl fentanyl), and its isomers, esters, ethers, salts and salts of isomers, esters, and ethers, into schedule I pursuant to the temporary scheduling provisions of the Controlled Substances Act. This action is based on a finding by the Administrator that the placement of 4-fluoroisobutyryl fentanyl into schedule I of the Controlled Substances Act is necessary to avoid an imminent hazard to the public safety. As a result of this order, the regulatory controls and administrative, civil, and criminal sanctions applicable to schedule I controlled substances will be imposed on persons who handle (manufacture, distribute, reverse distribute, import, export, engage in research, conduct instructional activities or chemical analysis, or possess), or propose to handle, 4-fluoroisobutyryl fentanyl.

DATES: This temporary scheduling order is effective May 3, 2017, until May 3, 2019, unless it is extended for an additional year or a permanent scheduling proceeding is completed. The DEA will publish a document in the **Federal Register** announcing an extension or permanence.

FOR FURTHER INFORMATION CONTACT: Michael J. Lewis, Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (202) 598–6812.

SUPPLEMENTARY INFORMATION:

Legal Authority

Section 201 of the Controlled Substances Act (CSA), 21 U.S.C. 811, provides the Attorney General with the authority to temporarily place a substance into schedule I of the CSA for two years without regard to the requirements of 21 U.S.C. 811(b) if he finds that such action is necessary to avoid an imminent hazard to the public safety. 21 U.S.C. 811(h)(1). In addition, if proceedings to control a substance are initiated under 21 U.S.C. 811(a)(1), the Attorney General may extend the temporary scheduling [1] for up to one year. 21 U.S.C. 811(h)(2).

Where the necessary findings are made, a substance may be temporarily scheduled if it is not listed in any other schedule under section 202 of the CSA, 21 U.S.C. 812, or if there is no exemption or approval in effect for the substance under section 505 of the Federal Food, Drug, and Cosmetic Act (FDCA), 21 U.S.C. 355. 21 U.S.C. 811(h)(1). The Attorney General has delegated scheduling authority under 21 U.S.C. 811 to the Administrator of the DEA. 28 CFR 0.100.

[1] Though DEA has used the term ''final order'' with respect to temporary scheduling orders in the past, this notice adheres to the statutory language of 21 U.S.C. 811(h), which refers to a ''temporary scheduling order.'' No substantive change is intended.

Background

Section 201(h)(4) of the CSA, 21 U.S.C. 811(h)(4), requires the Administrator to notify the Secretary of the Department of Health and Human Services (HHS) of his intention to temporarily place a substance into schedule I of the CSA.[2] The Administrator transmitted the notice of intent to place 4-fluoroisobutyryl fentanyl into schedule I on a temporary basis to the Assistant Secretary by letter dated January 5, 2017. The Assistant Secretary responded to this notice by letter dated January 17, 2017, and advised that based on review by the Food and Drug Administration (FDA), there are currently no investigational new drug applications or approved new drug applications for 4-fluoroisobutyryl fentanyl. The Assistant Secretary also stated that the HHS has no objection to the temporary placement of 4-fluoroisobutyryl fentanyl into schedule I of the CSA. The DEA has taken into consideration the Assistant Secretary's comments as required by 21 U.S.C. 811(h)(4). 4-Fluoroisobutyryl fentanyl is not currently listed in any schedule under the CSA, and no exemptions or approvals are in effect for 4-fluoroisobutyryl fentanyl under section 505 of the FDCA, 21 U.S.C. 355. The DEA has found that the control of 4-fluoroisobutyryl fentanyl in schedule I on a temporary basis is necessary to avoid an imminent hazard to the public safety, and as required by 21 U.S.C. 811(h)(1)(A), a notice of intent to issue a temporary order to schedule 4-fluoroisobutyryl fentanyl was published in the **Federal Register** on March 23, 2017. 82 FR 14842.

To find that placing a substance temporarily into schedule I of the CSA is necessary to avoid an imminent hazard to the public safety, the Administrator is required to consider three of the eight factors set forth in section 201(c) of the CSA, 21 U.S.C. 811(c): The substance's history and current pattern of abuse; the scope, duration and significance of abuse; and what, if any, risk there is to the public health. 21 U.S.C. 811(h)(3). Consideration of these factors includes actual abuse, diversion from legitimate channels, and clandestine importation, manufacture, or distribution. 21 U.S.C. 811(h)(3).

A substance meeting the statutory requirements for temporary scheduling may only be placed into schedule I. 21 U.S.C. 811(h)(1). Substances in schedule I are those that have a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision. 21 U.S.C. 812(b)(1).

Available data and information for 4-fluoroisobutyryl fentanyl, summarized below, indicate that this synthetic opioid has a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision. The DEA's three-factor analysis, and the Assistant Secretary's January 17, 2017, letter, are available in their entirety under the tab ''Supporting Documents'' of the public docket of this action at *www.regulations.gov* under FDMS Docket ID: DEA–2017–0004 (Docket Number DEA–452).

Factor 4. History and Current Pattern of Abuse

The recreational abuse of fentanyl-like substances continues to be a significant concern. These substances are distributed to users, often with unpredictable outcomes. 4-Fluoroisobutyryl fentanyl has recently been encountered by law enforcement and public health officials and the adverse health effects and outcomes are demonstrated by fatal overdose cases. The documented negative effects of 4-fluoroisobutyryl fentanyl are consistent with those of other opioids.

On October 1, 2014, the DEA implemented STARLiMS (a web-based, commercial laboratory information management system) to replace the System to Retrieve Information from Drug Evidence (STRIDE) as its laboratory drug evidence data system of record. DEA laboratory data submitted after September 30, 2014, are reposited in STARLiMS. Data from STRIDE and STARLiMS were queried on December 21, 2016. STARLiMS registered 21 reports containing 4-fluoroisobutyryl fentanyl, all reported in 2016, from Florida, Maryland, Mississippi, New Jersey, New York, Texas, and the District of Columbia. According to STARLiMS, the first laboratory submission of 4-fluoroisobutyryl fentanyl occurred in March 2016 in Maryland. The DEA is not aware of any laboratory identifications of 4-fluoroisobutyryl fentanyl prior to 2016.

The National Forensic Laboratory Information System (NFLIS) is a national drug forensic laboratory reporting system that systematically collects results from drug chemistry analyses conducted by other federal, state and local forensic laboratories across the country. According to NFLIS, the only report of 4-fluoroisobutyryl fentanyl from state or local forensic laboratories was recorded in August 2016 in Pennsylvania. Due to normal lag time in reporting, NFLIS data from August through November 2016 is incomplete.[3]

Evidence suggests that the pattern of abuse of fentanyl analogues, including 4-fluoroisobutyryl fentanyl, parallels that of heroin and prescription opioid analgesics. Seizures of 4-fluoroisobutyryl fentanyl have been encountered in powder form and packaged similar to that of heroin. 4-Fluoroisobutyryl fentanyl has been encountered as a single substance as well as in combination with other substances of abuse, including heroin, fentanyl, furanyl fentanyl, methamphetamine, and cocaine. 4-Fluoroisobutyryl fentanyl has been connected to fatal overdoses, in which insufflation and intravenous routes of administration are documented.

Factor 5. Scope, Duration and Significance of Abuse

Reports collected by the DEA demonstrate 4-fluoroisobutyryl fentanyl is being abused for its opioid properties. This abuse of 4-fluoroisobutyryl fentanyl has resulted in morbidity and mortality (*see* DEA 3-Factor Analysis for full discussion). The DEA has received reports for at least 62 confirmed fatalities associated with 4-fluoroisobutyryl fentanyl. Information on these deaths, occurring as early as August 2016, was collected from post-mortem toxicology and medical examiner reports by the DEA. These deaths were reported from, and occurred in, Maryland. NFLIS and STARLiMS have a total of 22 drug reports in which 4-fluoroisobutyryl fentanyl was identified in drug exhibits submitted to forensic laboratories in 2016 from law enforcement encounters in Florida, Maryland, Mississippi, New Jersey, New York, Pennsylvania, Texas, and the District of Columbia. It is likely that the prevalence of 4-fluoroisobutyryl fentanyl in opioid analgesic-related emergency room admissions and deaths is underreported as standard immunoassays may not differentiate this substance from fentanyl.

The population likely to abuse 4-fluoroisobutyryl fentanyl overlaps with

[2] As discussed in a memorandum of understanding entered into by the Food and Drug Administration (FDA) and the National Institute on Drug Abuse (NIDA), the FDA acts as the lead agency within the HHS in carrying out the Secretary's scheduling responsibilities under the CSA, with the concurrence of NIDA. 50 FR 9518, Mar. 8, 1985. The Secretary of the HHS has delegated to the Assistant Secretary for Health of the HHS the authority to make domestic drug scheduling recommendations. 58 FR 35460, July 1, 1993.

[3] Information was obtained from NFLIS on December 21, 2016.

the population abusing prescription opioid analgesics and heroin. This is evidenced by the routes of drug administration and drug use history documented in 4-fluoroisobutyryl fentanyl fatal overdose cases. Because abusers of 4-fluoroisobutyryl fentanyl are likely to obtain this substance through unregulated sources, the identity, purity, and quantity are uncertain and inconsistent, thus posing significant adverse health risks to the end user. Individuals who initiate (*i.e.* use a drug for the first time) 4-fluoroisobutyryl fentanyl abuse are likely to be at risk of developing substance use disorder, overdose, and death similar to that of other opioid analgesics (*e.g.,* fentanyl, morphine, etc.).

Factor 6. What, if Any, Risk There Is to the Public Health

4-Fluoroisobutyryl fentanyl exhibits pharmacological profiles similar to that of fentanyl and other μ-opioid receptor agonists. The toxic effects of 4-fluoroisobutyryl fentanyl in humans are demonstrated by overdose fatalities involving this substance. Abusers of 4-fluoroisobutyryl fentanyl may not know the origin, identity, or purity of this substance, thus posing significant adverse health risks when compared to abuse of pharmaceutical preparations of opioid analgesics, such as morphine and oxycodone.

Based on information received by the DEA, the abuse of 4-fluoroisobutyryl fentanyl leads to the same qualitative public health risks as heroin, fentanyl and other opioid analgesic substances. As with any non-medically approved opioid, the health and safety risks for users are great. The public health risks attendant to the abuse of heroin and opioid analgesics are well established and have resulted in large numbers of drug treatment admissions, emergency department visits, and fatal overdoses.

4-Fluoroisobutyryl fentanyl has been associated with numerous fatalities. At least 62 confirmed overdose deaths involving 4-fluoroisobutyryl fentanyl abuse have been reported from Maryland in 2016. As the data demonstrates, the potential for fatal and non-fatal overdose exists for 4-fluoroisobutyryl fentanyl; thus, 4-fluoroisobutyryl fentanyl poses an imminent hazard to the public safety.

Finding of Necessity of Schedule I Placement To Avoid Imminent Hazard to Public Safety

In accordance with 21 U.S.C. 811(h)(3), based on the data and information summarized above, the continued uncontrolled manufacture, distribution, importation, exportation, and abuse of 4-fluoroisobutyryl fentanyl pose an imminent hazard to the public safety. The DEA is not aware of any currently accepted medical uses for this substance in treatment in the United States. A substance meeting the statutory requirements for temporary scheduling, 21 U.S.C. 811(h)(1), may only be placed into schedule I. Substances in schedule I are those that have a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision. Available data and information for 4-fluoroisobutyryl fentanyl indicate that this substance has a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision. As required by section 201(h)(4) of the CSA, 21 U.S.C. 811(h)(4), the Administrator, through a letter dated January 5, 2017, notified the Assistant Secretary of the DEA's intention to temporarily place this substance into schedule I. A notice of intent was subsequently published in the **Federal Register** on March 23, 2017. 82 FR 14842.

Conclusion

In accordance with the provisions of section 201(h) of the CSA, 21 U.S.C. 811(h), the Administrator considered available data and information, herein sets forth the grounds for his determination that it is necessary to temporarily schedule 4-fluoroisobutyryl fentanyl into schedule I of the CSA, and finds that placement of this synthetic opioid into schedule I of the CSA is necessary to avoid an imminent hazard to the public safety.

Because the Administrator hereby finds it necessary to temporarily place this synthetic opioid into schedule I to avoid an imminent hazard to the public safety, this temporary order scheduling 4-fluoroisobutyryl fentanyl will be effective on the date of publication in the **Federal Register**, and will be in effect for a period of two years, with a possible extension of one additional year, pending completion of the regular (permanent) scheduling process. 21 U.S.C. 811(h)(1) and (2).

The CSA sets forth specific criteria for scheduling a drug or other substance. Permanent scheduling actions in accordance with 21 U.S.C. 811(a) are subject to formal rulemaking procedures done ''on the record after opportunity for a hearing'' conducted pursuant to the provisions of 5 U.S.C. 556 and 557. 21 U.S.C. 811. The permanent scheduling process of formal rulemaking affords interested parties with appropriate process and the government with any additional relevant information needed to make a determination. Final decisions that conclude the permanent scheduling process of formal rulemaking are subject to judicial review. 21 U.S.C. 877. Temporary scheduling orders are not subject to judicial review. 21 U.S.C. 811(h)(6).

Requirements for Handling

Upon the effective date of this temporary order, 4-fluoroisobutyryl fentanyl will become subject to the regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, reverse distribution, importation, exportation, engagement in research, and conduct of instructional activities or chemical analysis with, and possession of schedule I controlled substances including the following:

1. *Registration.* Any person who handles (manufactures, distributes, reverse distributes, imports, exports, engages in research, or conducts instructional activities or chemical analysis with, or possesses), or who desires to handle, 4-fluoroisobutyryl fentanyl must be registered with the DEA to conduct such activities pursuant to 21 U.S.C. 822, 823, 957, and 958 and in accordance with 21 CFR parts 1301 and 1312, as of May 3, 2017. Any person who currently handles 4-fluoroisobutyryl fentanyl, and is not registered with the DEA, must submit an application for registration and may not continue to handle 4-fluoroisobutyryl fentanyl as of May 3, 2017, unless the DEA has approved that application for registration pursuant to 21 U.S.C. 822, 823, 957, 958, and in accordance with 21 CFR parts 1301 and 1312. Retail sales of schedule I controlled substances to the general public are not allowed under the CSA. Possession of any quantity of this substance in a manner not authorized by the CSA on or after May 3, 2017 is unlawful and those in possession of any quantity of this substance may be subject to prosecution pursuant to the CSA.

2. *Disposal of stocks.* Any person who does not desire or is not able to obtain a schedule I registration to handle 4-fluoroisobutyryl fentanyl, must surrender all quantities of currently held 4-fluoroisobutyryl fentanyl.

3. *Security.* 4-Fluoroisobutyryl fentanyl is subject to schedule I security requirements and must be handled and stored pursuant to 21 U.S.C. 821, 823, 871(b), and in accordance with 21 CFR 1301.71–1301.93, as of May 3, 2017.

4. *Labeling and packaging.* All labels, labeling, and packaging for commercial containers of 4-fluoroisobutyryl fentanyl must be in compliance with 21 U.S.C. 825, 958(e), and be in accordance with 21 CFR part 1302. Current DEA registrants shall have 30 calendar days from May 3, 2017, to comply with all labeling and packaging requirements.

5. *Inventory.* Every DEA registrant who possesses any quantity of 4-fluoroisobutyryl fentanyl on the effective date of this order must take an inventory of all stocks of this substance on hand, pursuant to 21 U.S.C. 827 and 958, and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11. Current DEA registrants shall have 30 calendar days from the effective date of this order to be in compliance with all inventory requirements. After the initial inventory, every DEA registrant must take an inventory of all controlled substances (including 4-fluoroisobutyryl fentanyl) on hand on a biennial basis, pursuant to 21 U.S.C. 827 and 958, and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11.

6. *Records.* All DEA registrants must maintain records with respect to 4-fluoroisobutyryl fentanyl pursuant to 21 U.S.C. 827 and 958, and in accordance with 21 CFR parts 1304, and 1312, 1317 and § 1307.11. Current DEA registrants shall have 30 calendar days from the effective date of this order to be in compliance with all recordkeeping requirements.

7. *Reports.* All DEA registrants who manufacture or distribute 4-fluoroisobutyryl fentanyl must submit reports pursuant to 21 U.S.C. 827 and in accordance with 21 CFR parts 1304, and 1312 as of May 3, 2017.

8. *Order Forms.* All DEA registrants who distribute 4-fluoroisobutyryl fentanyl must comply with order form requirements pursuant to 21 U.S.C. 828 and in accordance with 21 CFR part 1305 as of May 3, 2017.

9. *Importation and Exportation.* All importation and exportation of 4-fluoroisobutyryl fentanyl must be in compliance with 21 U.S.C. 952, 953, 957, 958, and in accordance with 21 CFR part 1312 as of May 3, 2017.

10. *Quota.* Only DEA registered manufacturers may manufacture 4-fluoroisobutyryl fentanyl in accordance with a quota assigned pursuant to 21 U.S.C. 826 and in accordance with 21 CFR part 1303 as of May 3, 2017.

11. *Liability.* Any activity involving 4-fluoroisobutyryl fentanyl not authorized by, or in violation of the CSA, occurring as of May 3, 2017, is unlawful, and may subject the person to administrative, civil, and/or criminal sanctions.

Regulatory Matters

Section 201(h) of the CSA, 21 U.S.C. 811(h), provides for a temporary scheduling action where such action is necessary to avoid an imminent hazard to the public safety. As provided in this subsection, the Attorney General may, by order, schedule a substance in schedule I on a temporary basis. Such an order may not be issued before the expiration of 30 days from (1) the publication of a notice in the **Federal Register** of the intention to issue such order and the grounds upon which such order is to be issued, and (2) the date that notice of the proposed temporary scheduling order is transmitted to the Assistant Secretary. 21 U.S.C. 811(h)(1).

Inasmuch as section 201(h) of the CSA directs that temporary scheduling actions be issued by order and sets forth the procedures by which such orders are to be issued, the DEA believes that the notice and comment requirements of the Administrative Procedure Act (APA) at 5 U.S.C. 553, do not apply to this temporary scheduling action. In the alternative, even assuming that this action might be subject to 5 U.S.C. 553, the Administrator finds that there is good cause to forgo the notice and comment requirements of 5 U.S.C. 553, as any further delays in the process for issuance of temporary scheduling orders would be impracticable and contrary to the public interest in view of the manifest urgency to avoid an imminent hazard to the public safety.

Further, the DEA believes that this temporary scheduling action is not a ''rule'' as defined by 5 U.S.C. 601(2), and, accordingly, is not subject to the requirements of the Regulatory Flexibility Act. The requirements for the preparation of an initial regulatory flexibility analysis in 5 U.S.C. 603(a) are not applicable where, as here, the DEA is not required by the APA or any other law to publish a general notice of proposed rulemaking.

Additionally, this action is not a significant regulatory action as defined by Executive Order 12866 (Regulatory Planning and Review), section 3(f), and, accordingly, this action has not been reviewed by the Office of Management and Budget (OMB).

This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132 (Federalism) it is determined that this action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

As noted above, this action is an order, not a rule. Accordingly, the Congressional Review Act (CRA) is inapplicable, as it applies only to rules. However, if this were a rule, pursuant to the Congressional Review Act, ''any rule for which an agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the federal agency promulgating the rule determines.'' 5 U.S.C. 808(2). It is in the public interest to schedule this substance immediately to avoid an imminent hazard to the public safety. This temporary scheduling action is taken pursuant to 21 U.S.C. 811(h), which is specifically designed to enable the DEA to act in an expeditious manner to avoid an imminent hazard to the public safety. 21 U.S.C. 811(h) exempts the temporary scheduling order from standard notice and comment rulemaking procedures to ensure that the process moves swiftly. For the same reasons that underlie 21 U.S.C. 811(h), that is, the DEA's need to move quickly to place this substance into schedule I because it poses an imminent hazard to the public safety, it would be contrary to the public interest to delay implementation of the temporary scheduling order. Therefore, this order shall take effect immediately upon its publication. The DEA has submitted a copy of this temporary order to both Houses of Congress and to the Comptroller General, although such filing is not required under the Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act), 5 U.S.C. 801–808 because, as noted above, this action is an order, not a rule.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

For the reasons set out above, the DEA amends 21 CFR part 1308 as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

■ 1. The authority citation for part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), unless otherwise noted.

■ 2. Amend § 1308.11 by adding paragraph (h)(16) to read as follows:

§ 1308.11 Schedule I

* * * * *

(h) * * *

(16) *N*-(4-fluorophenyl)-*N*-(1-phenethylpiperidin-4-yl)isobutyramide, its isomers, esters, ethers, salts and salts of isomers, esters and ethers (Other names: 4-fluoroisobutyryl fentanyl, *para*-fluoroisobutyryl fentanyl)	(9824)

Dated: April 27, 2017.

Chuck Rosenberg,

Acting Administrator.

[FR Doc. 2017–08943 Filed 5–2–17; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1904

[Docket No. OSHA–2015–0006]

RIN 1218–AC84

Clarification of Employer's Continuing Obligation To Make and Maintain an Accurate Record of Each Recordable Injury and Illness

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Final rule.

SUMMARY: Under the Congressional Review Act, Congress has passed, and the President has signed, Public Law 115–21, a resolution of disapproval of OSHA's final rule titled, ''Clarification of Employer's Continuing Obligation to Make and Maintain an Accurate Record of each Recordable Injury and Illness.'' OSHA published the rule, which contained various amendments to OSHA's recordkeeping regulations, on December 19, 2016. The amendments became effective on January 18, 2017. Because Public Law 115–21 invalidates the amendments to OSHA's recordkeeping regulations contained in the rule promulgated on December 19, 2016, OSHA is hereby removing those amendments from the Code of Federal Regulations.

DATES: This final rule becomes effective on May 3, 2017.

FOR FURTHER INFORMATION CONTACT:

Press inquiries: Mr. Frank Meilinger, Director, Office of Communications, OSHA, U.S. Department of Labor, Room N–3647, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–1999; email *meilinger.francis2@dol.gov.*

Technical inquiries: Ms. Mandy Edens, Director, Directorate of Technical Support and Emergency Management, OSHA, U.S. Department of Labor, Room N–3653, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2270; email *edens.mandy@dol.gov.*

Copies of this **Federal Register** *notice and news releases:* Electronic copies of these documents are available at OSHA's Web page at *http://www.osha.gov.*

SUPPLEMENTARY INFORMATION: On December 19, 2016, OSHA issued a final rule titled, ''Clarification of Employer's Continuing Obligation to Make and Maintain an Accurate Record of Each Recordable Injury and Illness.'' See 81 FR 91792. The final rule, which became effective on January 18, 2017, resulted in various amendments to OSHA's recordkeeping regulations clarifying that the duty to make and maintain accurate records of work-related injuries and illnesses is an ongoing obligation. On March 1, 2017 (Cong. Rec. pp. H1421–H1430), the House of Representatives passed a resolution of disapproval (H.J. Res. 83) of the rule under the Congressional Review Act (5 U.S.C. 801 *et seq.*). The Senate then passed H.J. Res. 83 on March 22, 2017. President Trump signed the resolution into law as Public Law 115–21 on April 3, 2017. Accordingly, OSHA is hereby removing the affected amendments to the recordkeeping regulations from the Code of Federal Regulations.

List of Subjects in 29 CFR Part 1904

Health statistics, Occupational safety and health, Safety, Reporting and recordkeeping requirements, State plans.

Accordingly, the Occupational Safety and Health Administration amends part 1904 of title 29 of the Code of Federal Regulations as follows:

PART 1904—RECORDING AND REPORTING OCCUPATIONAL INJURIES AND ILLNESSES

■ 1. Revise the authority citation for part 1904 to read as follows:

Authority: 29 U.S.C. 657, 658, 660, 666, 669, 673, Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012).

■ 2. Revise § 1904.0 to read as follows:

§ 1904.0 Purpose.

The purpose of this rule (part 1904) is to require employers to record and report work-related fatalities, injuries, and illnesses.

Note to § 1904.0: Recording or reporting a work-related injury, illness, or fatality does not mean that the employer or employee was at fault, that an OSHA rule has been violated, or that the employee is eligible for workers' compensation or other benefits.

Subpart C—Recordkeeping Forms and Recording Criteria

■ 3. Revise the heading of subpart C to read as set forth above.

■ 4. In § 1904.4, remove the note to § 1904.4(a) and revise paragraph (a) introductory text to read as follows:

§ 1904.4 Recording criteria.

(a) *Basic requirement.* Each employer required by this part to keep records of fatalities, injuries, and illnesses must record each fatality, injury and illness that:

* * * * *

■ 5. Revise § 1904.29(b)(3) to read as follows:

§ 1904.29 Forms.

* * * * *

(b) * * *

(3) *How quickly must each injury or illness be recorded?* You must enter each recordable injury or illness on the OSHA 300 Log and 301 Incident Report within seven (7) calendar days of receiving information that a recordable injury or illness has occurred.

* * * * *

■ 6. Revise the heading and paragraphs (a) and (b)(1) of § 1904.32 to read as follows:

§ 1904.32 Annual summary.

(a) *Basic requirement.* At the end of each calendar year, you must:

(1) Review the OSHA 300 Log to verify that the entries are complete and accurate, and correct any deficiencies identified;

(2) Create an annual summary of injuries and illnesses recorded on the OSHA 300 Log;

(3) Certify the summary; and

(4) Post the annual summary

(b) * * *

(1) *How extensively do I have to review the OSHA 300 Log entries at the end of the year?* You must review the entries as extensively as necessary to make sure that they are complete and correct.

* * * * *

■ 7. Revise the heading and paragraph (b) of § 1904.33 to read as follows:

§ 1904.33 Retention and updating.

* * * * *

(b) *Implementation*—(1) *Do I have to update the OSHA 300 Log during the five-year storage period?* Yes, during the storage period, you must update your stored OSHA 300 Logs to include newly discovered recordable injuries or illnesses and to show any changes that have occurred in the classification of previously recorded injuries and illnesses. If the description or outcome of a case changes, you must remove or line out the original entry and enter the new information.

(2) *Do I have to update the annual summary?* No, you are not required to update the annual summary, but you may do so if you wish.

(3) *Do I have to update the OSHA 301 Incident Reports?* No, you are not required to update the OSHA 301 Incident Reports, but you may do so if you wish.

■ 8. Revise § 1904.34 to read as follows:

§ 1904.34 Change in business ownership.

If your business changes ownership, you are responsible for recording and reporting work-related injuries and illnesses only for that period of the year during which you owned the establishment. You must transfer the part 1904 records to the new owner. The new owner must save all records of the establishment kept by the prior owner, as required by § 1904.33 of this part, but need not update or correct the records of the prior owner.

■ 9. Revise paragraphs (b)(2) introductory text and (b)(2)(iii) of § 1904.35 to read as follows:

§ 1904.35 Employee involvement.

* * * * *

(b) * * *

(2) *Do I have to give my employees and their representatives access to the OSHA injury and illness records?* Yes, your employees, former employees, their personal representatives, and their authorized employee representatives have the right to access the OSHA injury and illness records, with some limitations, as discussed below.

* * * * *

(iii) *If an employee or representative asks for access to the OSHA 300 Log, when do I have to provide it?* When an employee, former employee, personal representative, or authorized employee representative asks for copies of your current or stored OSHA 300 Log(s) for an establishment the employee or former employee has worked in, you must give the requester a copy of the relevant OSHA 300 Log(s) by the end of the next business day.

* * * * *

Subpart E—Reporting Fatality, Injury and Illness Information to the Government

■ 10. Revise the heading of subpart E to read as set forth above.

■ 11. Revise the heading and paragraph (a) of § 1904.40 to read as follows:

§ 1904.40 Providing records to government representatives.

(a) *Basic requirement.* When an authorized government representative asks for the records you keep under part 1904, you must provide copies of the records within four (4) business hours.

* * * * *

Signed at Washington, DC, on April 25, 2017.

Dorothy Dougherty,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2017–08754 Filed 5–2–17; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 243

[Docket No. FRA–2009–0033, Notice No. 4]

RIN 2130–AC68

Training, Qualification, and Oversight for Safety-Related Railroad Employees

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule; delay of implementation dates.

SUMMARY: This document delays the implementation dates in the final rule published November 7, 2014, because model training program developers alerted FRA they will not be able to timely produce model programs that an estimated 1,459 railroads and contractors are expected to use to comply with the rule's program submission requirements.

DATES: This regulation is effective June 2, 2017. Petitions for reconsideration of this delay must be received on or before May 23, 2017. Petitions for reconsideration will be posted in the docket for this proceeding. Comments on any submitted petition for reconsideration must be received on or before June 19, 2017.

ADDRESSES: Petitions for reconsideration or comments on such petitions: Any petitions and any comments on petitions related to Docket No. FRA–2009–0033 may be submitted by any of the following methods:

- *Online:* Comments should be filed at the Federal eRulemaking Portal, *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Management Facility, U.S. DOT, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* Room W12–140 on the Ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m. Monday through Friday, except federal holidays.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. All petitions and comments received will be posted without change to *http://www.regulations.gov;* this includes any personal information. Please see the Privacy Act heading in the **SUPPLEMENTARY INFORMATION** section of this document for Privacy Act information related to any submitted petitions or materials.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to Room W12–140 on the Ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Robert J. Castiglione, Staff Director—Technical Training, U.S. Department of Transportation, Federal Railroad Administration, 4100 International Plaza, Suite 450, Fort Worth, TX 76109–4820 (telephone: 817–447–2715); or Alan H. Nagler, Senior Trial Attorney, U.S. Department of Transportation, Federal Railroad Administration, Office of Chief Counsel, RCC–10, Mail Stop 10, West Building 3rd Floor, Room W31–309, 1200 New Jersey Avenue SE., Washington, DC 20590 (telephone: 202–493–6038).

SUPPLEMENTARY INFORMATION: FRA issued a final rule establishing minimum training standards for each category and subcategory of safety-related railroad employees and requiring railroad carriers, contractors, and subcontractors to submit training programs to FRA for FRA approval. The final rule was published November 7, 2014 (79 FR 66459) and was effective on January 6, 2015 (2014 Final Rule). The 2014 Final Rule was required by section 401(a) of the Rail Safety Improvement Act of 2008, Public Law 110–432, 122 Stat. 4883 (Oct. 16, 2008), codified at 49 U.S.C. 20162, and the Secretary of

Transportation delegated the authority to conduct this rulemaking and implement the rule to the Federal Railroad Administrator. 49 CFR 1.89(b).

In the preamble to the 2014 Final Rule, FRA noted the importance of establishing implementation dates and providing incentives for the early filing of model programs to improve the efficiency and effectiveness of the review process. FRA recognized it was paramount to give model program developers sufficient time to develop programs and receive FRA approval. FRA also recognized that employers would not use those model programs unless the employers were given a reasonable time to consider using those programs before the employers' deadline for implementation. Consequently, the 2014 Final Rule provided model program developers with an incentive to file all model programs by May 1, 2017—eight months before the first employers would have to submit model programs and two years before smaller employers (*i.e.,* those employers with less than 400,000 total employee work hours annually) would have to submit their model programs. *See* §§ 243.105(a)(3), and 243.101(a)(1) and (2). The incentive to submit early was a guarantee from FRA that the model program would be considered approved so it could be implemented within 180 days after the date of submission unless FRA identified that all or part of the program did not conform to the rule requirements.

After publishing the 2014 Final Rule, FRA took significant steps to educate the regulated community on its requirements. On May 1, 2015, FRA notified the regulated community it issued an Interim Final Compliance Guide published in the rulemaking docket. The guide illustrates ways to comply with the rule, provides the requirements in a different format to make it quicker and easier to understand, and answers questions FRA believes are likely to be frequently asked. Any sized employer can use this guide as a quick way to determine if FRA will likely find the employer's training program complies with the 2014 Final Rule. The guide was ''Interim Final'' because it was effective upon publication and signaled FRA would consider amending the guidance based on comments received. FRA considered all comments received by the June 30, 2015 deadline and considered many late-filed comments, as practicable, before issuing the Final Compliance Guide published in the rulemaking docket May 25, 2016.

FRA personnel also conducted significant outreach to the regulated community; making presentations at association conferences; participating in association-sponsored webinars; and having numerous meetings, conference calls, and other exchanges of information in which FRA answered questions as they arose. FRA included many of the questions and answers with broad industry scope in the Final Compliance Guide.

On March 20, 2017, FRA added information to its Web site to more broadly disseminate information about the 2014 Final Rule's requirements. *See https://www.fra.dot.gov/Page/P1023.* The information on FRA's Web site provides quick links to FRA's Final Compliance Guide, Frequently Asked Questions (FAQs), the portal for submitting training programs, and an electronic Shareholder Training Matrix (Matrix). The Matrix allows individuals to search general job categories and titles to determine whether training is required for a particular rule and what kind of training is required (*i.e.,* formal or on-the-job training, or a briefing only). Anyone can use the Matrix to determine what regulatory provisions must be included in a training program.

During FRA's outreach on the 2014 Final Rule, FRA heard concerns from the American Short Line and Regional Railroad Association (ASLRRA) and National Railroad Construction and Maintenance Association, Inc. (NRC), two of the associations identified in the Regulatory Impact Analysis (RIA) as likely model program developers. These two associations represent most of the 1,459 employers FRA projected would adopt model training programs rather than develop their own.[1] ASLRRA requested FRA's help in developing its model programs for its members, and FRA provided training documents FRA uses to train the agency's personnel on federal rail safety requirements. In December 2016, FRA completed sharing the last of those documents with ASLRRA. Because the training materials FRA made available to ASLRRA may be useful for others in the regulated community, FRA will also make them available on FRA's Web site. ASLRRA has submitted several model training programs to FRA and has made significant strides towards completing some programs. However, ASLRRA still has a significant number of training programs left to develop and submit.

Similarly, NRC informed FRA it found certain aspects of the rule confusing to implement and difficult for contractors to apply in practice. Despite FRA's efforts since 2015 to explain the regulatory requirements to NRC and its members through multiple webinars, conference calls, and other outreach, NRC informed FRA it needs more time to develop and submit model training programs the 2014 Final Rule requires.

The fact that both ASLRRA and NRC have notified FRA they cannot submit most or all of their model training programs by the May 1, 2017 deadline significantly impacts the costs associated with the rule and complicates the approval process. The 1,459 employers would bear significantly higher costs developing personalized training programs, rather than adopting model programs that are generic enough to apply to any size railroad or contractor. Further, FRA's resources would be stretched thin reviewing up to 1,459 individual employer programs, rather than a relatively small number of model programs. In addition, if FRA gives the associations additional time to produce model programs, FRA expects the quality of those model programs will be much better than those separately prepared by a large number of individual small or medium employers.

The additional time to implement the rule should also help model training program developers and other regulated entities comply with the final rule. Nevertheless, any individual employer, model training program developer, or other regulated person that finds these revised implementation deadlines difficult to comply with may file a waiver requesting additional time as permitted by 49 CFR part 211, subpart C for FRA approval. FRA would appreciate receiving any such request for additional time to comply with the implementation dates no earlier than four months before the relevant implementation deadline.

Of course, nothing in this rule affects the ability of any regulated entity from complying with the requirements in advance of any deadline.

In consideration of the foregoing, FRA delays each of the implementation dates in the 2014 Final Rule by one year.

[1] The RIA for the 2014 Final Rule provided the estimated costs and benefits, and explained FRA based this analysis on the premise that ''most small railroads and contractors will use consortiums or model training programs developed by industry associations . . . thereby minimizing costs.'' RIA at 15. In the RIA, FRA estimated that 1,459 railroads and contractors would use model programs.

Section-by-Section Analysis

Subpart B—Program Components and Approval Process

Section 243.101 Employer Program Required

The implementation dates in this section are delayed by one year so all employers will have an additional year to develop and submit training programs. Specifically, in paragraphs (a)(1) and (b), the January 1, 2018 implementation dates are changed to January 1, 2019.

In paragraph (a)(2), the implementation date in the 2014 Final Rule was dependent on the date FRA issued the Interim Final Compliance Guide published May 1, 2015. Because that date has passed, and FRA can now calculate the specific implementation date in paragraph (a)(2), FRA calculated that implementation date and added an additional year. Consequently, the May 1, 2019 implementation date is changed to May 1, 2020. It is also no longer necessary to reference the Interim Final Compliance Guide.

Section 243.105 Optional Model Program Development

The implementation date in paragraph (a)(3) of this section is delayed by one year. Consequently, model program developers will have an additional year to submit model programs. Instead of a May 1, 2017 implementation date, model program developers will have until May 1, 2018, for their programs to be considered approved by FRA and can be implemented 180 days after the date of submission.

Section 243.111 Approval of Programs Filed by Training Organizations or Learning Institutions

Each training organization or learning institution that has provided training services to employers this part covers will have an extra year to continue to offer such training services without FRA approval. The 2014 Final Rule specified that a training organization or learning institution that has provided training services to employers covered by this part before January 1, 2017, may continue to offer such training services without FRA approval until January 1, 2018. FRA amends paragraph (b) of this section so that both dates are delayed by one year. That requirement now reads that a training organization or learning institution that has provided training services to employers covered by this part before January 1, 2018, may continue to offer such training services without FRA approval until January 1, 2019.

Subpart C—Program Implementation and Oversight Requirements

Section 243.201 Employee Qualification Requirements

The implementation dates in this section are delayed by one year so all employers have an additional year to designate each of their existing safety-related railroad employees by occupational category or subcategory, and only permit designated employees to perform safety-related service in that occupational category or subcategory. In paragraph (a)(1), the September 1, 2018 implementation date is changed to September 1, 2019.

In paragraph (a)(2), the implementation date in the 2014 Final Rule was dependent on the date FRA issued the Interim Final Compliance Guide published May 1, 2015. Because that date has passed, and FRA can now calculate the specific implementation date in paragraph (a)(2), FRA calculated that implementation date and added an additional year. Consequently, the May 1, 2019 implementation date is changed to January 1, 2021. It also is no longer necessary to reference the Interim Final Compliance Guide.

In paragraph (b), the January 1, 2018 implementation date is changed to January 1, 2019.

In paragraphs (e)(1) and (2), the implementation dates for refresher training are also delayed by one year. Thus, the January 1, 2020 implementation date in paragraph (e)(1) is changed to January 1, 2021, and completion of that refresher training for each employee must be completed by no later than December 31, 2023, instead of the 2014 Final Rule requirement of December 31, 2022. In paragraph (e)(2), each employer with less than 400,000 total employee work hours annually must implement a refresher training program by May 1, 2022, rather than the 2014 Final Rule requirement of May 1, 2021, and complete that refresher training for each employee by no later than December 31, 2024, instead of the 2014 Final Rule requirement of December 31, 2023.

Public Proceedings

The Administrative Procedure Act generally requires agencies to provide the public with notice of proposed rulemaking and an opportunity to comment prior to publication of a substantive rule. However, 5 U.S.C. 553(b)(3)(B) authorizes agencies to dispense with notice and comment ''when the agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' FRA finds that providing notice and an opportunity to comment would be impracticable and contrary to the public interest. The first of several implementation deadlines for the regulated community is forthcoming on May 1, 2017. Providing notice and an opportunity to comment would likely preclude FRA from delaying the implementation dates before this important deadline passes. Delaying the implementation dates is necessary to ensure model programs have a chance to succeed. If FRA does not delay the implementation dates, costs to the regulated community and FRA are expected to escalate, and the quality of training programs is expected to decrease, which would be contrary to the public interest.

Regulatory Impact and Notices

Executive Orders 12866 and 13563 and DOT Regulatory Policies and Procedures

This rule has been evaluated in accordance with existing regulatory policies and procedures and is considered to be nonsignificant under both Executive Orders 12866 and 13563 and DOT policies and procedures. *See* 44 FR 11034, Feb. 26, 1979. This rule is beneficial for regulated entities by adding time to comply with the 2014 Final Rule and imposing no costs. Because any regulated entity may file according to the 2014 Final Rule's schedule or the extended schedule in this final rule, there are no specific costs associated with this rule.

Regulatory Flexibility Act and Executive Order 13272; Final Regulatory Flexibility Assessment

FRA determines and certifies that this final rule is not expected to have a significant impact on a substantial number of small entities. The requirements of this rule will apply to employers of safety-related railroad employees, whether the employers are railroads, contractors, or subcontractors. Although a substantial number of small entities are subject to this rule, the rule provides relief by extending all of the implementation dates in the 2014 Final Rule. Thus, the economic impact of this rule will not be significant because it will only provide additional time for all entities to comply.

This final rule will have no direct impact on small units of government, businesses, or other organizations. State rail agencies are not required to participate in this program. State owned

railroads will receive a positive impact by having additional time to comply.

Paperwork Reduction Act

There are no new collection of information requirements contained in this final rule and, in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.,* the record keeping and reporting requirements already contained in this rule have been approved by the Office of Management and Budget. The OMB approval number is OMB No. 2130–0597. The information collection requirements of this rule became effective when they were approved by OMB.

Federalism Implications

This rule will not have a substantial effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Thus in accordance with Executive Order 13132, ''Federalism'' (64 FR 43255, Aug. 10, 1999), preparation of a Federalism Assessment is not warranted.

International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards.

This final rule is purely domestic in nature and is not expected to affect trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States.

Environmental Impact

FRA has evaluated this rule in accordance with its ''Procedures for Considering Environmental Impacts'' (FRA's Procedures) (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this final rule is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4(c)(20) of FRA's Procedures. *See* 64 FR 28547 (May 26, 1999).

In accordance with section 4(c) and (e) of FRA's Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this final rule that might trigger the need for a more detailed environmental review. As a result, FRA finds that this final rule is not a major Federal action significantly affecting the quality of the human environment.

Unfunded Mandates Reform Act of 1995

Pursuant to section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each Federal agency ''shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).'' Section 202 of the Act (2 U.S.C. 1532) further requires that ''before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement'' detailing the effect on State, local, and tribal governments and the private sector. This final rule will not result in such an expenditure, and thus preparation of such a statement is not required.

Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' 66 FR 28355 (May 22, 2001). FRA has evaluated this final rule in accordance with Executive Order 13211, and has determined that this regulatory action is not a ''significant energy action'' within the meaning of the Executive Order.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement published in the **Federal Register** on April 11, 2000 (Volume 65, Number 70, Pages 19477–78), or you may visit *http://DocketsInfo.dot.gov.*

List of Subjects in 49 CFR Part 243

Administrative practice and procedure, Penalties, Railroad employees, Railroad safety, Reporting and recordkeeping requirements.

The Final Rule

For the reasons discussed in the preamble, FRA amends chapter II, subtitle B of title 49 of the Code of Federal Regulations as follows:

PART 243—[AMENDED]

■ 1. The authority citation for part 243 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20131–20155, 20162, 20301–20306, 20701–20702, 21301–21304, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.89.

Subpart B—Program Components and Approval Process—[Amended]

■ 2. Revise 243.101(a) and (b) to read as follows:

§ 243.101 Employer program required.

(a)(1) Effective January 1, 2019, each employer conducting operations subject to this part with 400,000 total employee work hours annually or more shall submit, adopt, and comply with a training program for its safety-related railroad employees.

(2) Effective May 1, 2020, each employer conducting operations subject to this part with less than 400,000 total employee work hours annually shall submit, adopt, and comply with a training program for its safety-related railroad employees.

(b) Except for an employer subject to the requirement in paragraph (a)(2) of this section, an employer commencing operations subject to this part after January 1, 2019, shall submit a training program for its safety-related railroad employees before commencing operations. Upon commencing operations, the employer shall adopt and comply with the training program.

* * * * *

■ 3. Revise 243.105(a)(3) to read as follows:

§ 243.105 Optional model program development.

(a) * * *

(3) Each model training program submitted to FRA before May 1, 2018, is considered approved and may be implemented 180 days after the date of submission unless the Associate Administrator advises the organization, business, or association that developed and submitted the program that all or part of the program does not conform.

* * * * *

■ 4. Revise 243.111(b) to read as follows:

§ 243.111 Approval of programs filed by training organizations or learning institutions.

* * * * *

(b) A training organization or learning institution that has provided training services to employers covered by this part before January 1, 2018, may continue to offer such training services without FRA approval until January 1, 2019. The Associate Administrator may extend this period at any time based on a written request. Such written requests for an extension of time to submit a program should contain any factors the training organization or learning institution wants the Associate Administrator to consider before approving or disapproving the extension.

* * * * *

Subpart C—Program Implementation and Oversight Requirements—[Amended]

■ 5. Revise 243.201(a)(1) and (2), (b), and (e)(1) and (2) to read as follows:

§ 243.201 Employee qualification requirements.

(a) * * *

(1) By no later than September 1, 2019, each employer with 400,000 total employee work hours annually or more in operation as of January 1, 2019, shall declare the designation of each of its existing safety-related railroad employees by occupational category or subcategory, and only permit designated employees to perform safety-related service in that occupational category or subcategory. The Associate Administrator may extend this period based on a written request.

(2) By no later than January 1, 2021, each employer with less than 400,000 total employee work hours annually in operation as of January 1, 2020, shall declare the designation of each of its existing safety-related railroad employees by occupational category or subcategory, and only permit designated employees to perform safety-related service in that occupational category or subcategory. The Associate Administrator may extend this period based on a written request.

(b) Except for an employer subject to the requirement in paragraph (a)(2) of this section, an employer commencing operations after January 1, 2019 shall declare the designation of each of its existing safety-related railroad employees by occupational category or subcategory before beginning operations, and only permit designated employees to perform safety-related service in that category or subcategory. Any person designated shall have met the requirements for newly hired employees or those assigned new safety-related duties in accordance with paragraph (c) of this section.

* * * * *

(e) * * *

(1) Beginning January 1, 2021, each employer with 400,000 total employee work hours annually or more shall deliver refresher training at an interval not to exceed 3 calendar years from the date of an employee's last training event, except where refresher training is specifically required more frequently in accordance with this chapter. If the last training event occurs before FRA's approval of the employer's training program, the employer shall provide refresher training either within 3 calendar years from that prior training event or no later than December 31, 2023. Each employer shall ensure that, as part of each employee's refresher training, the employee is trained and qualified on the application of any Federal railroad safety laws, regulations, and orders the person is required to comply with, as well as any relevant railroad rules and procedures promulgated to implement those Federal railroad safety laws, regulations, and orders.

(2) Beginning May 1, 2022, each employer with less than 400,000 total employee work hours annually shall deliver refresher training at an interval not to exceed 3 calendar years from the date of an employee's last training event, except where refresher training is specifically required more frequently in accordance with this chapter. If the last training event occurs before FRA's approval of the employer's training program, the employer shall provide refresher training either within 3 calendar years from that prior training event or no later than December 31, 2024. Each employer shall ensure that, as part of each employee's refresher training, the employee is trained and qualified on the application of any Federal railroad safety laws, regulations, and orders the person is required to comply with, as well as any relevant railroad rules and procedures promulgated to implement those Federal railroad safety laws, regulations, and orders.

Patrick T. Warren,

Acting Administrator.

[FR Doc. 2017–08944 Filed 5–2–17; 8:45 am]

BILLING CODE 4910–06–P

Proposed Rules

Federal Register
Vol. 82, No. 84
Wednesday, May 3, 2017

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2017–0232; Airspace Docket No. 17–AGL–11]

Proposed Amendment of Class D and E Airspace: Battle Creek, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify Class D airspace, and Class E airspace designated as an extension at W.K. Kellogg Airport (formerly W.K. Kellogg Field), Battle Creek, MI. Airspace reconfiguration is necessary due to the decommissioning of the Battle Creek VHF Omnidirectional Range Collocated Tactical Air Navigation System (VORTAC), and cancellation of the VOR approaches. Class E airspace extending upward from 700 feet above the surface also would be amended due to the redesign of the Instrument Landing System (ILS) approach, thereby removing reference to the BATOL navigation aid and Battle Creek ILS localizer. This action would also update the geographic coordinates of the airport, as well as make an editorial change replacing Airport/Facility Directory with the term Chart Supplement in the associated Class D and E airspace areas.

DATES: Comments must be received on or before June 19, 2017.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–9826, or 1–800–647–5527. You must identify FAA Docket No. FAA–2017–0232; Airspace Docket No. 17–AGL–11, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

FAA Order 7400.11A, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: 202–267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11A at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Ron Laster, Federal Aviation Administration, Contract Support, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5879.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, part, A, subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend Class D airspace, Class E extension area airspace and Class E airspace extending upward 700 feet above the surface at W.K. Kellogg Airport, Battle Creek, MI.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2017–0232/Airspace Docket No. 17–AGL–11.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.regulations.gov.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability and Summary of Documents Proposed for Incorporation by Reference

This document proposes to amend FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective

September 15, 2016. FAA Order 7400.11A is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11A lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by amending Class D airspace, Class E airspace designated as an extension, and Class E Airspace extending upward from 700 feet above the surface at W.K. Kellogg Airport (formerly W.K. Kellogg Field), Battle Creek, MI.

The airport name change to W.K. Kellogg Airport from W.K. Kellogg Field and the airport's geographic coordinates would be amended in the associated Class D and Class E airspace listed in this proposal.

Class E extension area airspace would be amended by removing the Battle Creek VORTAC from the airspace description due to its decommissioning.

Also, Class E airspace extending upward from 700 feet above the surface would be amended by removing the southwest segment, and the segment 7 miles northwest and 4.4 miles southeast of the Battle Creek ILS localizer northeast course extending 10.4 miles northeast of the localizer outer marker/nondirectional radio beacon. The northeast segment would be amended to within 2 miles each side of the 047° bearing (from 4 miles each side of the 049° bearing) from the airport extending from 7-mile radius of the airport to 10 miles northeast (from 10.9 miles) of the airport, and southeast segment would be amended to within 2 miles each side of the 126° bearing from the airport extending from the 7-mile radius to 7.4 miles (from 11.1 miles) southeast of the airport. This action would enhance the safety and management of the standard instrument approach procedures for IFR operations at the airport. Additionally, this action would amend Class E airspace extending upward from 700 feet above the surface by removing reference to the BATOL navigation aid and Battle Creek ILS localizer. This action would enhance the safety and management of the standard instrument approach procedures for IFR operations at the airport.

Lastly, this action would replace the outdated term Airport/Facility directory with the term Chart Supplement.

Class D and E airspace designations are published in paragraph 5000, 6004 and 6005, respectively, of FAA Order 7400.11A, dated August 3, 2016, and effective September 15, 2016, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016, is amended as follows:

* * * * *

Paragraph 5000 Class D Airspace Areas.

AGL MI D Battle Creek, MI [Amended]

Battle Creek, W.K. Kellogg Airport, MI
(Lat. 42°18′23″ N., long. 85°15′00″ W.)

That airspace extending upward from the surface to and including 3,500 feet MSL within a 4.5-mile radius of W.K. Kellogg Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Chart Supplement.

* * * * *

Paragraph 6004 Class E Airspace Areas Designated as an Extension to a Class D or Class E Surface Area.

* * * * *

AGL MI E4 Battle Creek, MI [Amended]

Battle Creek, W.K. Kellogg Airport, MI
(Lat. 42°18′23″ N., long. 85°15′00″ W.)

That airspace extending upward from the surface within the 4.5-mile radius of W.K. Kellogg Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Chart Supplement.

* * * * *

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

AGL MI E5 Battle Creek, MI [Amended]

Battle Creek, W.K. Kellogg Airport, MI
(Lat. 42°18′23″ N., long. 85°15′00″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of W.K. Kellogg Airport, and within 2 miles each side of the 047° bearing from the airport extending from the 7-mile radius to 10 miles northeast of the airport, and within 2 miles each side of the 126° bearing from the airport extending from the 7-mile radius to 7.4 miles southeast of the airport.

Issued in Fort Worth, Texas on April 25, 2017.

Walter Tweedy,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2017–08856 Filed 5–2–17; 8:45 am]

BILLING CODE 4910–13–P

LEGAL SERVICES CORPORATION

45 CFR Part 1629

Bonding Requirements for Recipients

AGENCY: Legal Services Corporation.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would revise the Legal Services Corporation's (LSC or Corporation) regulation about bonding requirements for LSC

recipients. It would require recipients to bond all their employees and to ensure that third parties who handle recipients' funds have bond coverage, allow recipients to use other forms of insurance similar to fidelity bonds, raise the minimum level of coverage, and allow recipients to use LSC funds to pay for bonding costs. This proposed rule will update part 1629 to reflect current insurance practices and simplify the language in the rule to reduce confusion.

DATES: Comments must be received by June 2, 2017.

ADDRESSES: You may submit comments by any of the following methods:

- *Federal Rulemaking Portal:* Follow the instructions for submitting comments.
- *Email: lscrulemaking@lsc.gov.* Include ''Part 1629 Rulemaking'' in the subject line of the message.
- *Fax:* (202) 337–6519.
- *Mail:* Stefanie K. Davis, Assistant General Counsel, Legal Services Corporation, 3333 K Street NW., Washington, DC 20007, ATTN: Part 1629 Rulemaking.
- *Hand Delivery/Courier:* Stefanie K. Davis, Assistant General Counsel, Legal Services Corporation, 3333 K Street NW., Washington, DC 20007, ATTN: Part 1629 Rulemaking.
- *Instructions:* LSC prefers electronic submissions via email with attachments in Acrobat PDF format. LSC will not consider written comments sent to any other address or received after the end of the comment period.

FOR FURTHER INFORMATION CONTACT: Stefanie K. Davis, Assistant General Counsel, Legal Services Corporation, 3333 K Street NW., Washington, DC 20007; (202) 295–1563 (phone), (202) 337–6519 (fax), or *sdavis@lsc.gov.*

SUPPLEMENTARY INFORMATION:

I. Regulatory Background

LSC created part 1629 in 1984 after several instances in which recipients lost LSC funds through the dishonest behavior of persons associated with the recipient. 49 FR 28717, July 16, 1984. While the recipient recovered the funds in some cases, in others, the recipient had to absorb the loss. *Id.*

Before enacting part 1629, LSC recommended that recipients have fidelity coverage as a basic internal control. *See* LSC Audit and Accounting Guide for Recipients and Auditors, revised June 1977, p. 3–3. LSC intended part 1629 to ''make mandatory [this] important protection for the limited funds available to serve eligible clients.'' 49 FR 23396, June 6, 1984. LSC originally proposed requiring programs to obtain fidelity bond coverage at a minimum level equal to 25% of the recipient's annualized LSC funding. *Id.* Based on comments received in response to the proposed rule, LSC decreased the required coverage level to 10%. 49 FR 28717, July 16, 1984. LSC also set a $50,000 minimum coverage level ''in response to the recognition that a loss to a small program is proportionally greater in effect than a similar one to a large program.'' *Id.*

LSC added rulemaking on part 1629 to its annual rulemaking agenda in April 2016. Regulatory action is justified for three reasons. First, the regulation is outdated. LSC has not revised part 1629 since it was adopted in 1984, and LSC should update it to reflect current insurance practices.

Second, the regulation was derived from a source that does not provide the optimal model for a federally funded grant-making entity today. The original rule was based on fidelity bonding provisions found in the Employee Retirement Income Security Act of 1974 (ERISA). *See* Section 412 of Public Law 93–406, and related regulations at 29 CFR 2550.412–1 and 29 CFR part 2580. ERISA concerns minimum standards for retirement plans in private industry. LSC no longer believes that this is an appropriate model for LSC to follow, and that instead LSC should look to current regulations governing similar grant-making entities and to reflect current insurance practices.

Third, the current regulation is in some respects unclear or ambiguous. LSC has received requests for guidance on how to interpret certain provisions in part 1629, particularly those sections about the form and extent of coverage required by the rule. LSC does not believe that the language in part 1629 provides sufficiently clear guidance to LSC recipients or to LSC staff. LSC proposes crafting an approach that is tailored to LSC's needs and that simplifies the language in the rule to reduce confusion.

On October 17, 2016, the Operations and Regulations Committee (Committee) of LSC's Board of Directors (Board) voted to recommend that the Board authorize rulemaking on part 1629. On October 19, 2016, the Board authorized LSC to begin rulemaking. On April 23, 2017, the Committee voted to recommend that the Board approve publication of this NPRM in the **Federal Register** for notice and public comment. On April 24, 2017, the Board accepted the Committee's recommendation and voted to approve publication of this NPRM with a 30-day comment period.

II. Discussion of the Proposed Changes

Section 1629.1 Purpose

LSC proposes to add a purpose section stating who must be covered under the bond and what losses the bond must protect against. Part 1629 currently does not have a purpose section.

Section 1629.2 Definitions

LSC proposes to define *annualized funding level* to include the amount of the Basic Field Grant and special purpose grant funds a recipient receives annually from LSC. LSC believes it is necessary to include ''special purpose grants'' of LSC funds, such as Technology Initiative Grants, Pro Bono Innovation Fund grants, and emergency relief grants, in the definition of ''annualized funding level'' to ensure that the maximum amount of LSC funds are protected.

Section 1629.3 Who must be bonded?

LSC currently requires recipients to bond ''[e]very director, officer, employee and agent of a program who *handles* funds or property of the program . . . .'' 45 CFR 1629.2(a) (emphasis added). LSC considers the term ''handles'' to include access to funds or other recipient property or ''decision-making powers with respect to funds or property which can give rise to [] risk of loss.'' *Id.* Through a review of recipient insurance policies, LSC has found that most grantees have fidelity coverage for all their employees. This common practice exceeds the current minimum requirements of part 1629. When employees who were not required to be bonded under part 1629 have misappropriated LSC funds, grantees that exceeded the minimum part 1629 coverage have typically been protected from loss. LSC believes this common practice is desirable and proposes to require that recipients carry coverage for all employees, regardless of whether the employees ''handle'' program funds.

LSC currently requires grantees to bond ''agents'' who handle funds or property of the program. 45 CFR 1629.2(a). But LSC has found that most recipients' policies do not cover the dishonest or fraudulent actions of agents and independent contractors. In fact, many policies explicitly exclude agents and independent contractors from the definition of ''covered employee.'' This exclusion is problematic, as LSC recipients often turn to third parties to handle payroll functions. *See* Legal Services Corporation Board of Directors, Operations and Regulations Committee, Transcript of Rulemaking Workshop, Wednesday, May 18, 2016, pp. 82–84

(comments of Diana White). This means that LSC funds are handled by persons outside of the recipient's control and insurance coverage. In areas where there are few insurers to choose from, it may be impossible for recipients to get insurance that covers ''agents'' or ''independent contractors.''

To address these issues and adequately protect LSC funds from misappropriation by recipients and third parties, LSC proposes three changes to the existing rule. First, LSC proposes to require that recipients' bonds cover volunteers, in addition to directors, officers, employees, and agents of the recipient. Second, LSC proposes to require that recipients ensure that third parties who provide payroll, billing, and collection services to the recipient have fidelity bond coverage or similar insurance. The recipient may accomplish this either by extending its own insurance to the third party or by ensuring that the third party has its own fidelity bond coverage sufficient to protect LSC funds in the third party's hands. Finally, LSC proposes to include language allowing recipients to either cover subrecipients through their own fidelity policies or ensure that the subrecipients have policies adequate to protect subgranted funds.

Section 1629.4 What forms of bonds can recipients use?

Current § 1629.5 allows recipients to choose different forms of bonds, such as individual, blanket, or schedule. 45 CFR 1629.5. Section 1629.5 currently does not address whether recipients may choose types of insurance other than a fidelity bond that achieve the same purpose as a fidelity bond. Most LSC recipients now protect against employee dishonesty through riders to their standard commercial crime policies. Few grantees obtain separate fidelity bonds.

In 1999, LSC issued an external opinion permitting recipients to use employee dishonesty insurance to satisfy the bonding requirements of part 1629 if the recipient could show that the policy gives the same level of protection as a fidelity bond. *See* External Opinion 1999–10–26, part 1629 Purchase of Employee Dishonesty Insurance in Lieu of a Fidelity Bond (October 26, 1999). To reflect this long-standing LSC policy, LSC proposes revising part 1629 to expressly allow recipients to substitute employee dishonesty policies or other methods of coverage for fidelity bonds. This revision gives recipients greater flexibility to choose the most readily available and cost-effective methods of insuring LSC funds. The revision also will make clear that the substance and amount of coverage is more important than the form.

Section 1629.5 What losses must the bond cover?

Current § 1629.4 requires recipients to have bonds that protect them against ''all those risks of loss that might arise through dishonest or fraudulent acts in the handling of funds [.]'' The strict language—''all those risks of loss''—implies that recipients must be completely covered in the event of a loss, and that policies with deductibles would not be acceptable under current part 1629. That is because if a recipient has LSC funds stolen, and the policy requires the recipient to absorb a portion of that loss by paying a deductible, then the recipient's policy did not cover against ''all those risks of loss.'' Such strict language makes sense under ERISA statutes and regulations, as they are designed to protect retirees' pension funds. But such language may prevent recipients from obtaining policies that will protect LSC funds adequately if policies without deductibles are prohibitively expensive.

LSC proposes to simplify the language about the types of losses that the bond must cover and to revise the rule to allow recipients to purchase policies that require payment of deductibles. LSC proposes revising the definition to state simply that the ''bond must provide recovery for loss caused by such acts as: Fraud, dishonesty, larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, wrongful conversion, willful misapplication, or any other fraudulent or dishonest act committed by an employee, officer, director, agent, or volunteer.''

Section 1629.6 What is the required minimum level of coverage?

Under the existing rule, recipients must maintain bond coverage equal to at least 10% of the recipient's annualized LSC funding or of the initial grant if the program is a new grantee. 45 CFR 1629.1(a). The minimum level of coverage may never be less than $50,000. *Id.* LSC proposes to increase the minimum coverage level, which has remained unchanged since 1984. Based on a sampling of current recipients' policies, the majority of recipients already exceed the $50,000 minimum level of coverage. In fact, most policies provided coverage in excess of $100,000. Because the common practice among recipients already is to insure recipient funds above the minimum amount required by current § 1629.1(a), LSC believes it is reasonable for LSC to raise the minimum coverage level to $100,000. LSC does not propose to change the minimum percentage for coverage.

Section 1629.7 May LSC funds be used to cover bonding costs?

Part 1629 currently is silent as to which costs associated with fidelity bond coverage—deductibles, premiums, rates, and single loss retention—are allowable using LSC funds. To improve clarity on this point, LSC proposes to allow recipients to use LSC funds to pay for the costs of bonding under this part if they are (1) consistent with 45 CFR part 1630, (2) in accordance with sound business practice, and (3) reasonable. This proposed rule is based on the Uniform Guidance, which allows for such costs. *See* 2 CFR 200.427.

LSC considered limiting the amount of deductibles that LSC would consider reasonable in the proposed rule. During the process of drafting this proposed rule, LSC examined a sample of recipients' current fidelity bonds and found that most of those recipients' policies have deductibles ranging from $1,000 to $5,000. LSC could not determine, based on research of external sources, whether there are current best practices in the nonprofit insurance world that would help LSC establish a reasonable limit on deductibles. LSC determined that it would need more data to set deductible limits and has therefore chosen to allow recipients the flexibility to consider the losses they are willing to absorb when deciding the appropriate deductibles.

List of Subjects in 45 CFR Part 1629

Fidelity bond, Grant programs—law, Insurance, Legal services, Surety bonds.

■ For the reasons set forth in the preamble, the Legal Services Corporation proposes to revise 45 CFR part 1629 as follows:

PART 1629—BONDING REQUIREMENTS FOR RECIPIENTS

Sec.

Authority: 42 U.S.C. 2996e(1)(A) and 2996f(3).

§ 1629.1 Purpose.

This part is intended to protect LSC funds by requiring that recipients be

bonded or have similar insurance coverage to indemnify recipients against losses resulting from fraudulent or dishonest acts committed by one or more employees, officers, directors, agents, volunteers, and third-party contractors who handle LSC funds.

§ 1629.2 Definitions.

Annualized funding level means the amount of:

(1) Basic Field Grant funds (including Agricultural Worker and Native American) and

(2) Special grants of LSC funds, including Technology Initiative Grants, Pro Bono Innovation Fund grants, and emergency relief grants, awarded by LSC to the recipient for the fiscal year included in the recipient's annual audited financial statements.

§ 1629.3 Who must be bonded?

(a) A recipient must supply fidelity bond coverage for all employees, officers, directors, agents, and volunteers.

(b) If a recipient uses a third party for payroll, billing, or collection services, the recipient must either supply coverage covering the third party or ensure that the third party has a fidelity bond or similar insurance coverage.

(c) For recipients with subgrants:

(1) The recipient must extend its fidelity bond coverage to supply identical coverage to the subrecipient and the subrecipient's directors, officers, employees, agents, and volunteers to the extent required to comply with this Part; or

(2) The subrecipient must supply proof of its own fidelity bond coverage that meets the requirements of this Part for the subrecipient's directors, officers, employees, agents, and volunteers.

§ 1629.4 What forms of bonds can recipients use?

(a) A recipient may use any form of bond, such as individual, name schedule, position schedule, blanket, or any combination of such forms of bonds, as long as the type or combination of bonds secured adequately protects LSC funds.

(b) A recipient may use similar forms of insurance that essentially fulfill the same purpose as a fidelity bond.

§ 1629.5 What losses must the bond cover?

The bond must provide recovery for loss caused by such acts as fraud, dishonesty, larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, wrongful conversion, willful misapplication, or any other fraudulent or dishonest act committed by an employee, officer, director, agent, or volunteer.

§ 1629.6 What is the required minimum level of coverage?

(a) A recipient must carry fidelity bond coverage or similar coverage at a minimum level of at least ten percent of its annualized funding level for the previous fiscal year.

(b) If a recipient is a new recipient, the coverage must be at a minimum level of at least ten percent of the initial grant.

(c) Notwithstanding paragraphs (a) and (b) of this section, recipients must not carry coverage under this part at a level less than $100,000.

§ 1629.7 Can LSC funds be used to cover bonding costs?

Costs of bonding required by this part are allowable if expended consistent with 45 CFR part 1630. Costs of bonding such as rates, deductibles, single loss retention, and premiums, are allowable as an indirect cost if such bonding is in accordance with sound business practice and is reasonable.

Dated: April 27, 2017.

Stefanie K. Davis,

Assistant General Counsel.

[FR Doc. 2017–08857 Filed 5–2–17; 8:45 am]

BILLING CODE 7050–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket Nos. 10–90, 14–58; Report No. 3075]

Petitions for Reconsideration of Action in Rulemaking Proceeding

AGENCY: Federal Communications Commission.

ACTION: Petitions for reconsideration.

SUMMARY: Petitions for Reconsideration (Petitions) have been filed in the Commission's rulemaking proceeding by Jennifer A. Manner, on behalf of HUGHES NETWORK SYSTEMS, LLC, Bohdan R. Pankiw, on behalf of Pennsylvania Public Utility Commission, and Arthur F. McNulty, on behalf of Pennsylvania Department of Community and Economic Development.

DATES: Oppositions to the Petitions must be filed on or before May 18, 2017. Replies to an opposition must be filed on or before May 30, 2017.

ADDRESSES: Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Alexander Minard, Telecommunications Access Policy Division, Wireline Competition Bureau, at (202) 418–7400 or email: *Alexander.Minard@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document, Report No. 3075, released April 25, 2017. The full text of the Petitions is available for viewing and copying at the FCC Reference Information Center, 445 12th Street SW., Room CY–A257, Washington, DC 20554. They also may be accessed online via the Commission's Electronic Comment Filing System at: *http://apps.fcc.gov/ecfs/.* The Commission will not send a copy of this document pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A), because this document does not have an impact on any rules of particular applicability.

Subject: In the Matter of Connect America Fund, ETC Annual Reports and Certifications, FCC 17–12, published at 82 FR 14466, March 21, 2017, in WC Docket Nos. 10–90, 14–58. This document is being published pursuant to 47 CFR 1.429(e). *See also* 47 CFR 1.4(b)(1) and 1.429(f), (g).

Number of Petitions Filed: 2.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2017–08858 Filed 5–2–17; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 82, No. 84
Wednesday, May 3, 2017

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Rural Housing Service

U.S. Department of Agriculture Multi-Family Housing Program 2017 Industry Forums—Open Teleconference and/or Web Conference Meetings

AGENCY: Rural Housing Service, USDA.

ACTION: Notice.

SUMMARY: This Notice announces a series of teleconferences and/or web conference meetings regarding the U.S. Department of Agriculture (USDA), Multi-Family Housing program, which will be scheduled on a quarterly basis, but may be held more often at the Agency's discretion. This Notice also outlines suggested discussion topics for the meetings and is intended to notify the general public of their opportunity to participate in the teleconference and/or web conference meetings.

DATES: See **SUPPLEMENTARY INFORMATION** section for dates.

FOR FURTHER INFORMATION CONTACT: Timothy James, Loan and Finance Analyst, Multi-Family Housing, (919) 873–2056, or email *timothy.james@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION: The objectives of this series of teleconferences are as follows:

- Enhance the effectiveness of the Multi-Family Housing program.
- Establish a two-way communications forum to update industry participants and Rural Housing Service (RHS) staff.
- Enhance RHS' awareness of issues that impact the Multi-Family Housing program.
- Increase transparency and accountability in the Multi-Family Housing program.

Topics to be discussed could include, but will not be limited to, the following:

- Updates on USDA Multi-Family Housing Program activities.
- Perspectives on the Multi-Family Housing Notice of Funds Availability processes.
- Comments on multi-family transaction processes.
- Comments on particular servicing-related activities of interest at that time.

Teleconference and/or web conference meetings are scheduled to occur quarterly during 2017. The dates and times for the teleconference and/or web conference meetings will be announced via email to parties registered as described below.

Any member of the public wishing to register for the meetings and obtain the call-in number, access code, web link and other information for any of the public teleconference and/or web conference meetings may contact Timothy James, Loan and Finance Analyst, Multi-Family Housing, (919) 873–2056, or email *timothy.james@wdc.usda.gov* and provide their name, title, Agency/company name, address, telephone numbers and email address. Persons who are already registered do not need to register again. Individuals who plan to participate and need reasonable accommodations or language translation assistance should inform Timothy James within 10 business day in advance of the meeting date. The teleconference and/or web conference meetings will be in compliance with Section 508 of the Rehabilitation Act.

Non-Discrimination Statement

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USD, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discrimination based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (*e.g.,* Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720–2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877–8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at: *http://www/ascr.usda.gov/complaint_filing_cust.html* and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter to USDA by:

(1) *By mail:* U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW., Washington, DC 20250–9410;

(2) *Fax:* (202) 690–7442; or

(3) *Email: program.intake@usda.gov.*

Dated: April 24, 2017.

Richard A. Davis,

Acting Administrator, Rural Housing Service.

[FR Doc. 2017–08885 Filed 5–2–17; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF COMMERCE

International Trade Administration

[Docket No.: 170328324–7425–02; A–570–053]

Certain Aluminum Foil From the People's Republic of China: Notice of Extension of Time for Public Comment Regarding Status of the People's Republic of China as a Nonmarket Economy Country Under the Antidumping and Countervailing Duty Laws

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

ACTION: Notice; extension of comment period.

SUMMARY: In response to requests for additional time, the Department of Commerce (Department) is extending the closing deadline for submitting comments to a request for public comment and information entitled *Certain Aluminum Foil From the People's Republic of China: Notice of*

Initiation of Inquiry Into the Status of the People's Republic of China as a Nonmarket Economy Country Under the Antidumping and Countervailing Duty Laws, 82 FR 16162 (April 3, 2017). In the request for public comment and information, and as part of the less-than-fair-value investigation of certain aluminum foil from the People's Republic of China (PRC), the Department is seeking broad input from the public regarding whether the PRC should continue to be treated as a nonmarket economy (NME) country under the antidumping and countervailing duty laws. The Department is seeking public comment and information with respect to the factors to be considered under the Tariff Act of 1930, as amended (the Act).

DATES: To be assured of consideration, written comments and information must be received no later than May 10, 2017.

ADDRESSES: You may submit comments and information by either of the following methods:

- *Federal eRulemaking Portal: www.Regulations.gov.* The identification number is ITA–2017–0002.
- Postal Mail/Commercial Delivery to Leah Wils-Owens, Department of Commerce, Enforcement and Compliance, Room 3720, 1401 Constitution Avenue NW., Washington, DC 20230 and reference ''Inquiry Into the Status of the People's Republic of China as a Nonmarket Economy Country Under the Antidumping and Countervailing Duty Laws, ITA–2017–0002'' in the subject line.

Instructions: You must submit comments by one of the above methods to ensure that the comments are received and considered. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments and information received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. Any comments and information must be in English or be accompanied by English translations to be considered. The Department will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only. Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov,* using the search term ''ITA–2017–0002''.

FOR FURTHER INFORMATION CONTACT: Albert Hsu at (202) 482–4491 or Daniel Calhoun at (202) 482–1439.

SUPPLEMENTARY INFORMATION: The Department has treated the PRC as an NME country under section 771(18) of the Act in all past antidumping duty investigations and administrative reviews.[1] The Department last reviewed the PRC's NME status in 2006 and determined to continue to treat the PRC as an NME country. As part of the less-than-fair-value investigation of certain aluminum foil from the PRC,[2] and pursuant to its authority under section 771(18)(C)(ii) of the Act, the Department initiated an inquiry into the PRC's status as an NME country.[3] As part of this inquiry, the Department is interested in receiving public comment and information with respect to the PRC on the factors enumerated by section 771(18)(B) of the Act, which the Department must take into account in making a market/nonmarket economy determination.[4]

The original deadline for the submission of public comments and information was May 3, 2017.[5] Instructions for commenters, including the specific types of information the Department is seeking, are available in the *Initiation of Inquiry Notice.* With this notice, the Department announces that the closing deadline for submission of public comment and information pertaining to the PRC's NME status is May 10, 2017.

This notice is issued and published pursuant to section 771(18)(C)(ii) of the Act.

Dated: April 27, 2017.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2017–08966 Filed 5–2–17; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Certain Aluminum Foil from the People's Republic of China: Notice of Initiation of Inquiry Into the Status of the People's Republic of China as a Nonmarket Economy Country Under the Antidumping and Countervailing Duty Laws,* 82 FR 16162 (April 3, 2017) (*Initiation of Inquiry Notice*).

[2] *See Certain Aluminum Foil from the People's Republic of China: Initiation of Less-Than-Fair-Value Investigation,* 82 FR 15691 (March 30, 2017).

[3] *Initiation of Inquiry Notice,* 82 FR at 16163.

[4] *Id.*

[5] *Id.*

DEPARTMENT OF COMMERCE

International Trade Administration

[Application No. 17–00002]

Export Trade Certificate of Review

ACTION: Notice of Application for an Export Trade Certificate of Review for Fox Petroleum USA Corporation (''FPUC''), Application No. 17–00002.

SUMMARY: The Office of Trade and Economic Analysis (''OTEA'') of the International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review (''Certificate''). This notice summarizes the proposed application and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Joseph Flynn, Director, Office of Trade and Economic Analysis, International Trade Administration, (202) 482–5131 (this is not a toll-free number) or email at *etca@trade.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. Sections 4001–21) (''the Act'') authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from State and Federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its application.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a non-confidential version of the comments (identified as such) should be included. Any comments not marked as privileged or confidential business information will be deemed to be non-confidential.

An original and five (5) copies, plus two (2) copies of the non-confidential version, should be submitted no later than 20 days after the date of this notice to: Export Trading Company Affairs, International Trade Administration,

U.S. Department of Commerce, Room 21028, Washington, DC 20230.

Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, non-confidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as ''Export Trade Certificate of Review, application number 17–00002.''

Summary of the Application

Applicant: FPUC, 41 Eldora Drive, Rochester, New York 14624.

Contact: Iola Edwards, CEO Telephone: (585) 487–8288.

Application No.: 17–00002.

Date Deemed Submitted: April 19, 2017.

Summary: FPUC seeks a Certificate of Review to engage in the Export Trade Activities and Methods of Operation described below in the following Export Trade and Export Markets:

Export Trade

Products: All Products.

Services: All services related to the export of Products.

Technology Rights: All intellectual property rights associated with Products or Services, including, but not limited to: Patents, trademarks, services marks, trade names, copyrights, neighboring (related) rights, trade secrets, know-how, and confidential databases and computer programs.

Export Trade Facilitation Services (as related to the export of products): Export Trade Facilitation Services, including but not limited to: Consulting and trade strategy, arranging and coordinating delivery of Products to the port of export; arranging for inland and/or ocean transportation; allocating Products to vessel; arranging for storage space at port; arranging for warehousing, stevedoring, wharfage, handling, inspection, fumigation, and freight forwarding; insurance and financing; documentation and services related to compliance with customs' requirements; sales and marketing; export brokerage; foreign marketing and analysis; foreign market development; overseas advertising and promotion; Products-related research and design based upon foreign buyer and consumer preferences; inspection and quality control; shipping and export management; export licensing; provisions of overseas sales and distribution facilities and overseas sales staff; legal; accounting and tax assistance; development and application of management information systems; trade show exhibitions; professional services in the area of government relations and assistance with federal and state export assistance programs (*e.g.,* Export Enhancement and Market Promotion programs, invoicing (billing) foreign buyers; collecting (letters of credit and other financial instruments) payment for Products; and arranging for payment of applicable commissions and fees.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operations

To engage in Export Trade in the Export Markets, FPUC may

1. Provide and/or arrange for the provision of Export Trade Facilitation Services;

2. Enter into exclusive and/or non-exclusive licensing and/or sales agreements with Suppliers for the export of Products and Services, and/or Technology Rights to Export Markets;

3. Enter into exclusive and/or non-exclusive agreements with distributors and/or sales representatives in Export Markets;

4. Allocate export orders or divide Export Markets among Suppliers for the sale and/or licensing of Products and Services and/or Technology Rights;

5. Establish the price of Products and Services and/or Technology Rights for sales and/or licensing in Export Markets;

6. Negotiate, enter into, and/or manage licensing agreements for the export of Technology Rights; and

7. FPUC may exchange information with individual Suppliers on a one-to-one basis regarding that Supplier's inventories and near-term production schedules in order that the availability of Products for export can be determined and effectively coordinated by FPUC with its distributors in Export Markets.

Definition

''Supplier'' means a person who produces, provides, or sells Products, Services, and/or Technology Rights.

Dated: April 28, 2017.

Joseph Flynn,

Director, Office of Trade and Economic Analysis, International Trade Administration.

[FR Doc. 2017–08941 Filed 5–2–17; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

National Advisory Committee on Windstorm Impact Reduction Meeting

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: The National Advisory Committee on Windstorm Impact Reduction (NACWIR or Committee), will hold a webinar initiating the work of the Committee via video conference on Wednesday, May 17, 2017, from 9:00 a.m. to 1:00 p.m. Eastern Time. This will be the first meeting of the Committee and is intended to provide Committee members and the public with a description of the statutory requirements and scope of work of the Committee, an overview of the National Windstorm Impact Reduction Program (NWIRP) and the draft NWIRP Strategic Plan, and to propose timeframes and milestones for the work of the Committee. Interested members of the public will be able to view the webinar and participate from remote locations by calling in to a central phone number.

DATES: The NACWIR will hold a meeting via video conference on Wednesday, May 17, 2017, from 9:00 a.m. until 1:00 p.m. Eastern Time. The meeting will be open to the public.

ADDRESSES: Questions regarding the meeting should be sent to the National Windstorm Impact Reduction Program Director, National Institute of Standards and Technology (NIST), 100 Bureau Drive, Mail Stop 8611, Gaithersburg, Maryland 20899. Anyone wishing to participate must register by 5:00 p.m. Eastern Time, Wednesday, May 10, 2017. For instructions on how to participate in the meeting, please see the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Steve Potts, Management and Program Analyst, NWIRP, Engineering Laboratory, NIST, 100 Bureau Drive, Mail Stop 8611, Gaithersburg, Maryland 20899. He can also be contacted by email at *Stephen.potts@nist.gov;* or by phone at (301) 975–5412.

SUPPLEMENTARY INFORMATION: The National Advisory Committee on Windstorm Impact Reduction (NACWIR) was established in accordance with the requirements of the National Windstorm Impact Reduction Act Reauthorization of 2015, Public Law 114–52. The NACWIR is charged with offering assessments and recommendations on—

- trends and developments in the natural, engineering, and social sciences and practices of windstorm impact mitigation;
- the priorities of the Strategic Plan for the National Windstorm Impact Reduction Program (Program);
- the coordination of the Program;
- the effectiveness of the Program in meeting its purposes; and
- any revisions to the Program which may be necessary.

Background information on NWIRP and the Committee is available at *https://www.nist.gov/news-events/news/2016/07/nist-leads-federal-effort-save-lives-and-property-windstorms.*

Pursuant to the Federal Advisory Committee Act, as amended, 5 U.S.C. App., notice is hereby given that the NACWIR will hold a webinar initiating the work of the Committee via video conference on Wednesday, May 17, 2017, from 9:00 a.m. to 1:00 p.m. Eastern Time. This will be the first meeting of the Committee and is intended to provide Committee members and the public with a description of the statutory requirements and scope of work of the Committee, an overview of the NWIRP and the draft NWIRP Strategic Plan, and to propose timeframes and milestones for the work of the Committee. The agenda and meeting materials will be posted on the NACWIR Web site at *https://www.nist.gov/el/mssd/nwirp/national-advisory-committee-windstorm-impact-reduction.*

All participants of the meeting are required to pre-register. Please submit your first and last name, email address, and phone number to Steve Potts at *Stephen.potts@nist.gov* or (301) 975–5412. After pre-registering, participants will be provided with detailed instructions on how to join the video conference remotely. Approximately 15 minutes will be reserved from 12:35 p.m.–12:50 p.m. Eastern Time for public comments. Speaking times will be assigned on a first-come, first-served basis. The amount of time per speaker will be determined by the number of requests received. Speakers who wish to expand upon their oral statements, those who had wished to speak but could not be accommodated, and those who were unable to participate are invited to submit written statements to NACWIR, National Institute of Standards and Technology, 100 Bureau Drive, MS 8611, Gaithersburg, Maryland 20899, or electronically by email to *stephen.potts@nist.gov.*

Dated: April 27, 2017.

Kevin Kimball,

Chief of Staff.

[FR Doc. 2017–08881 Filed 5–2–17; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF392

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Greater Atlantic Region, NMFS, has made a preliminary determination that two Exempted Fishing Permit (EFP) applications contain all of the required information and warrant further consideration. These EFPs would allow commercial fishing vessels to land Atlantic halibut under the minimum size limit and in excess of the possession limit for studies by the University of Massachusetts, Dartmouth, School for Marine Science and Technology, and The Nature Conservancy.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments must be received on or before May 18, 2017.

ADDRESSES: You may submit written comments by any of the following methods:

- *Email: NMFS.GAR.EFP@noaa.gov.* Include in the subject line ''Comments on SMAST and TNC Atlantic halibut EFPs.''
- *Mail:* John K. Bullard, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope ''SMAST and TNC Atlantic Halibut EFPs.''

FOR FURTHER INFORMATION CONTACT: Spencer Talmage, Fishery Management Specialist, 978–281–9232, *Spencer.Talmage@noaa.gov.*

SUPPLEMENTARY INFORMATION: The University of Massachusetts, Dartmouth, School for Marine Science and Technology (SMAST) and the Nature Conservancy submitted complete applications for two EFPs on March 17, 2017, and March 27, 2017, to conduct commercial fishing activities that regulations would otherwise restrict. The EFPs would authorize commercial fishing vessels to land Atlantic halibut in excess of the possession limit and that are smaller than the legal size limit.

The two EFPs would support a project studying Atlantic halibut stock structure, seasonal movement, behavior, and life history being conducted with funding from the Saltonstall-Kennedy Grant Program. The goal of the project is to address identified information gaps to improve future Atlantic halibut stock assessments. The project consists of two components: Tagging, and biological sampling. Project Investigators have requested two EFPs and a scientific Letter of Acknowledgement (LOA) for the project. The LOA was issued on March 31, 2017, for research trips to conduct at-sea tagging during summer 2017.

The SMAST EFP would support the tagging component of the research project. The EFP would allow one vessel to land Atlantic halibut in excess of the possession limit as described in 50 CFR 648.86(c) and below the minimum size limit as described in § 648.83(a)(1). Up to 10 Atlantic halibut would be landed under the tagging component of the project. Once these fish have been landed, no additional Atlantic halibut above the possession limit or below the minimum size limit would be landed. These fish would be held by SMAST to test preliminary tagging techniques prior to field tagging that will be conducted under the LOA this summer. Fish would be caught during regular fishing operations by the exempted vessel. This testing is necessary to ensure that tagging conducted in the course of the main project is effective. The exemption from the minimum size limit is necessary to ensure testing is completed on all size ranges of halibut expected to be tagged during the course of the main project.

Fishing under the SMAST tagging EFP would occur from April 2017 through July 2017. On average, the fishing vessel would conduct three to five tows per day on seven day trips, with each tow lasting three to five hours. Fishing would occur east of Cape

Cod, only in statistical area 521. While fishing under the tagging EFP, the vessel would be using a groundfish otter trawl with a 7-inch (17.8 cm) mesh codend.

For biological sampling component, TNC requested exemptions from the Atlantic halibut possession limit as described in § 648.86(c) and the Atlantic halibut minimum size limit as described in § 648.83(a)(1). The EFP would be issued to 21 commercial fishing vessels, and fish would be caught during regular fishing operations by the exempted vessels. A maximum of two halibut may be biologically sampled per trip. Atlantic halibut under the minimum size limit may be landed and transferred to SMAST researchers. Fish above the minimum size limit would be sampled at sea and landed for commercial sale. A total of 250 halibut would be sampled under this EFP, and approximately 165 fish would be under the minimum size limit. Sampling would include recording of fish length and weight, as well as removal of gonads, otoliths, and genetic material. The exemption from the minimum size limit would allow for researchers to acquire data from all sizes of halibut, which is necessary to ensure that results of the project are accurate and reflective of the halibut population. The exemption from the possession limit is necessary to ensure that the researchers are able to obtain sufficient biological samples to conduct their research. No halibut above the possession limit or below the minimum size limit could be landed for sale.

Fishing under the biological sampling EFP would occur during the 2017 fishing years, from May 1, 2017 through April 30, 2018. Multiple gear types, including handline/jig, longline, sink gillnet,and otter trawl would be used by vessels fishing under the EFP. Fishing under the biological sampling EFP would occur throughout both the Gulf of Maine and the Georges Bank Regulated Mesh Areas. Statistical areas 514, 521, 522, 525, and 526 would be most commonly fished by vessels participating in the biological sampling EFP.

If approved, the applicants may request minor modifications and extensions to the EFPs throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope or impact of the initially approved EFP request. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 27, 2017.

Karen H. Abrams,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2017–08906 Filed 5–2–17; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XF286

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Site Characterization Surveys Off the Coast of New Jersey

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; proposed incidental harassment authorization; request for comments.

SUMMARY: NMFS has received an application from Ocean Wind, LLC (Ocean Wind), for an Incidental Harassment Authorization (IHA) to take marine mammals, by harassment, incidental to high-resolution geophysical (HRG) and geotechnical survey investigations associated with marine site characterization activities off the coast of New Jersey in the area of the Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (OCS–A 0498) (Lease Area). Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an IHA to Ocean Wind to incidentally take marine mammals during the specified activities.

DATES: Comments and information must be received no later than June 2, 2017.

ADDRESSES: Comments on Ocean Wind's IHA application should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. The mailbox address for providing email comments is *itp.mccue@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted to the Internet at *www.nmfs.noaa.gov/pr/permits/incidental/energy_other.htm* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Laura McCue, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the applications and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *www.nmfs.noaa.gov/pr/permits/incidental/energy_other.htm.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined ''negligible impact'' as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term ''take'' means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine

mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action with respect to environmental consequences on the human environment.

Summary of Request

NMFS received a request from Ocean Wind for an IHA to take marine mammals incidental to Spring 2017 geophysical survey investigations off the coast of New Jersey in the OCS–A 0498 Lease Area, designated and offered by the U.S. Bureau of Ocean Energy Management (BOEM), to support the development of an offshore wind project. Ocean Wind's request was for harassment only, and NMFS concurs that mortality is not expected to result from this activity; therefore, an IHA is appropriate.

The proposed geophysical survey activities would occur for 42 days beginning in early June 2017, and geotechnical survey activities would take place in September 2017 and last for approximately 12 days. The following specific aspects of the proposed activities are likely to result in the take of marine mammals: Shallow and medium-penetration sub-bottom profilers (chirper and sparker) used during the HRG survey, and dynamically-positioned (DP) vessel thruster used in support of geotechnical survey activities. Take, by Level B Harassment only, of individuals of five species of marine mammals is anticipated to result from the specified activities. No serious injury or mortality is expected from Ocean Wind's HRG and geotechnical surveys.

Description of the Specified Activity

Overview

Ocean Wind proposes to conduct a geophysical and geotechnical survey off the coast of New Jersey in the Lease Area to support the characterization of the existing seabed and subsurface geological conditions in the Lease Area. This information is necessary to support the siting, design, and deployment of up to two meteorological data collection buoys called floating light and detection ranging buoys (FLIDARs) and up to two metocean and current buoys, as well as to obtain a baseline assessment of seabed/sub-surface soil conditions in the Lease Area to support the siting of the proposed wind farm. Surveys will include the use of the following equipment: Multi-beam depth sounder, side-scan sonar, sub-bottom profiler, and cone penetration tests (CPTs).

Dates and Duration

HRG surveys are anticipated to commence in early June 2017 and will last for approximately 42 days, including estimated weather down time. Geotechnical surveys requiring the use of the DP drill ship will take place in September 2017, at the earliest, and will last for approximately 12 days excluding weather downtime. Equipment is expected run continuously for 24 hours per day.

Specified Geographic Region

Ocean Wind's survey activities will occur in the approximately 160,480-acre Lease Area designated and offered by the BOEM, located approximately nine miles (mi) southeast of Atlantic City, New Jersey, at its closest point (see Figure 1 of the IHA application). The Lease Area falls within the New Jersey Wind Energy Area (NJ WEA; Figure 1–1 of the IHA application) with water depths ranging from 15–40 meters (m) (49–131 feet (ft)).

Detailed Description of Specific Activities

HRG Survey Activities

Marine site characterization surveys will include the following HRG survey activities:

- Depth sounding (multibeam depth sounder) to determine water depths and general bottom topography;
- Magnetic intensity measurements for detecting local variations in regional magnetic field from geological strata and potential ferrous objects on and below the bottom;
- Seafloor imaging (sidescan sonar survey) for seabed sediment classification purposes, to identify natural and man-made acoustic targets resting on the bottom as well as any anomalous features;
- Shallow penetration sub-bottom profiler (chirper) to map the near surface stratigraphy (top 0–5 meter (m) soils below seabed); and
- Medium penetration sub-bottom profiler (sparker) to map deeper subsurface stratigraphy as needed (soils down to 75–100 m below seabed).

The HRG surveys are scheduled to begin, at the earliest, on June 1, 2017. Table 1 identifies the representative survey equipment that is being considered in support of the HRG survey activities. The make and model of the listed HRG equipment will vary depending on availability but will be finalized as part of the survey preparations and contract negotiations with the survey contractor. The final selection of the survey equipment will be confirmed prior to the start of the HRG survey program. Only the make and model of the HRG equipment may change, not the types of equipment or the addition of equipment with characteristics that might have effects beyond (*i.e.,* resulting in larger ensonified areas) those considered in this proposed IHA. None of the proposed HRG survey activities will result in the disturbance of bottom habitat in the Lease Area.

TABLE 1—SUMMARY OF PROPOSED HRG SURVEY EQUIPMENT

HRG equipment	Operating frequencies	Source level (manufacturer)	Source level (bay state wind survey) *	Beamwidth (degree)	Pulse duration (millisec)
Sonardyne Ranger 2 USBL	35–50 kHz	200 dB_{Peak}	194 dB_{Peak}	180	1.
Klein 3000H Sidescan Sonar [1]	445/900 kHz	245 dB_{Peak}	n/a	0.2	0.0025 to 0.4.
GeoPulse Sub-bottom Profiler (chirper)	1.5 to 18 kHz	223.5 dB_{Peak}	203 dB_{Peak}	55	0.1 to 22.
Geo-Source 600/800 (sparker)	50 to 5000 Hz	222 dB_{Peak}/ 223 dB_{Peak}.	2016 dB_{Peak}/212 dB_{Peak}.	110	1 to 10.
SeaBat 7125 Multibeam Sonar [2]	200/400 kHz	220 dB_{Peak}	n/a	2	0.03 to .3.

* Gardline 2016, 2017.

[1] It should be noted that only one of the representative sidescan sonars would be selected for deployment.

[2] It should be noted that only one of the representative multibeam sonars would be selected for deployment.

The HRG survey activities will be supported by a vessel approximately 98 to 180 feet (ft) in length and capable of maintaining course and a survey speed of approximately 4.5 knots while transiting survey lines. HRG survey activities across the Lease Area will generally be conducted at 900-meter (m) line spacing. Up to two FLIDARs and two wave buoys would be deployed within the Lease Area, and up to three potential locations for FLIDAR deployment will be investigated. At each FLIDAR and wave buoy deployment locations, the survey will be conducted along a tighter 30-m line spacing to meet the BOEM requirements as set out in the July 2015 Guidelines for Providing Geophysical, Geotechnical, and Geohazard Information Pursuant and Archeological and Historic Property Information in 30 CFR part 585.

Given the size of the Lease Area (160,480 acres), to minimize cost, the duration of survey activities, and the period of potential impact on marine species, Ocean Wind has proposed conducting continuous HRG survey operations 24 hours per day. Based on 24-hour operations, the estimated duration of the survey activities would be approximately 42 days (including estimated weather down time).

Both NMFS and BOEM have advised that the deployment of HRG survey equipment, including the use of intermittent, impulsive sound-producing equipment operating below 200 kilohertz (kHz) (*e.g.,* sub-bottom profilers), has the potential to cause acoustic harassment to marine mammals. Based on the frequency ranges of the equipment to be used in support of the HRG survey activities (Table 1) and the hearing ranges of the marine mammals that have the potential to occur in the Lease Area during survey activities (Table 3), only the sub-bottom profilers (GeoPulse Sub-bottom Profiler and Geo-Source sparker) and Sonardyne Ranger 2 USBL fall within the established marine mammal hearing ranges and have the potential to result in Level B harassment of marine mammals. However, since the sparker systems and USBL will be used concurrently, and the sparkers are louder, only the sparkers will be used in the take analysis.

The equipment positioning systems use vessel-based underwater acoustic positioning to track equipment (in this case, the sub-bottom profiler) in very shallow to very deep water. Equipment positioning systems will be operational at all times during HRG survey data acquisition (*i.e,* concurrent with the sub-bottom profiler operation). Sub-bottom profiling systems identify and measure various marine sediment layers that exist below the sediment/water interface. A sound source emits an acoustic signal vertically downwards into the water and a receiver monitors the return signal that has been reflected off the sea floor. Some of the acoustic signal will penetrate the seabed and be reflected when it encounters a boundary between two layers that have different acoustic impedance. The system uses this reflected energy to provide information on sediment layers beneath the sediment-water interface. A shallow penetration sub-bottom profiler will be used to map the near surface stratigraphy of the Lease Area. A Geo-Source 200/800, or similar model, medium-penetration sub-bottom profiler (sparker) will be used to map deeper subsurface stratigraphy in the Lease Area as needed (soils down to 75–100 m below seabed). The sparker is towed from a boom arm off the side of the survey vessel and emits a downward pulse with a duration of 1 to 2 millisecond (ms) at an operating frequency of 50 to 5000 Hertz (Hz).

Geotechnical Survey Activities

Marine site characterization surveys will involve the following geotechnical survey activities:

- Sample boreholes to determine geological and geotechnical characteristics of sediments;
- Deep CPTs to determine stratigraphy and in-situ conditions of the deep surface sediments; and
- Shallow CPTs to determine stratigraphy and in-situ conditions of the near surface sediments.

It is anticipated that the geotechnical surveys will take place no sooner than September 2017. The geotechnical survey program will consist of up to 8 deep sample bore holes and adjacent 8 deep CPTs both to a depth of approximately 130 ft to 200 ft (40 m to 60 m) below the seabed, as well as 30 shallow CPTs, up to 130 ft (40 m) below seabed.

The investigation activities are anticipated to be conducted from a 250-ft to 350-ft (76 m to 107 m) DP drill ship. DP vessel thruster systems maintain their precise coordinates in waters with automatic controls. These control systems use variable levels of power to counter forces from current and wind. Operations will take place over a 24-hour period to ensure cost, the duration of survey activities, and the period of potential impact on marine species are minimized. Based on 24-hour operations, the estimated duration of the geotechnical survey activities would be approximately 12 days excluding weather downtime. Estimated weather downtime is approximately 10 days.

Field studies conducted off the coast of Virginia (Tetra Tech 2014) to determine the underwater noise produced by borehole drilling and CPTs confirm that these activities do not result in underwater noise levels that are harmful or harassing to marine mammals (*i.e.,* do not exceed NMFS' current Level A and Level B harassment thresholds for marine mammals). However, the initial field verification conducted for the Bay State Wind Lease Area indicates that Level B harassment of marine mammals is likely at approximately 590 ft (180 m) from the DP thruster sound source (Gardline 2016). The underwater continuous noise produced by the thrusters associated with the DP drill ship that will be used to support the geotechnical activities has the potential to result in Level B harassment of marine mammals.

Proposed mitigation, monitoring, and reporting measures are described in detail later in the document (Mitigation section and Monitoring and Reporting section).

Description of Marine Mammals in the Area of the Specified Activity

There are 35 species of marine mammals that potentially occur in the Northwest Atlantic OCS region (BOEM 2014) (Table 2). The majority of these species are pelagic and/or northern species, or are so rarely sighted that their presence in the Lease Area is unlikely. Five marine mammal species are listed under the Endangered Species Act (ESA) and are known to be present, at least seasonally, in the waters off the Northwest Atlantic OCS: Blue whale, fin whale, right whale, sei whale, and sperm whale. These species are highly migratory and do not spend extended periods of time in a localized area. The waters off the Northwest Atlantic OCS (including the Lease Area) are primarily used as a stopover point for these species during seasonal movements north or south between important feeding and breeding grounds. While fin whales have the potential to occur within the Lease Area, the sperm, blue, and sei whales are more pelagic and/or northern species, and although their presence within the Lease Area is possible, they are considered less common with regards to sightings. In particular, while sperm whales are known to occur occasionally in the region, their sightings are considered rare and thus their presence in the Lease Area at the time of the proposed activities is considered unlikely. These large whale species are generally migratory and typically do not spend

extended periods of time in a localized area. The waters of the Mid-Atlantic (including the Lease Area) are primarily used as areas where animals occur seasonally to feed, or as habitat during seasonal movements between the more northward feeding areas and southern hemisphere breeding grounds typically used by some of the large whale species. The mid-sized whale species (minke), large baleen whales, and the sperm whale are present year-round in the continental shelf and slope waters and may occur in the waters of the Lease Area though movements will vary with prey availability and other habitat factors. North Atlantic right whales do occur seasonally in the area; however, we did not calculate take for this species based on the low seasonal density and short duration of project activities. Because the potential for sperm whale, blue whale, and sei whale to occur within the Lease Area during the marine survey period is unlikely, these species will not be described further in this analysis.

Because the potential for many of the odontocete species to occur within the Lease Area during the marine survey period is unlikely, given that these species are either extralimital or are found more often offshore and do not occur as often on the outer continental shelf, these species will not be described further in this analysis. Bottlenose dolphins, short-beaked common dolphin, and harbor porpoise, however, do occur in the lease area, and are described below.[3]

While stranding data indicate that gray seals have the potential to occur within the Lease Area, multiple sources indicate that their presence would not be likely within the Lease Area. BOEM (2012) indicates that the presence of gray seals would not be likely. Furthermore, Northeast Navy Operations Area (OPAREA) Density Estimates indicate that data for gray seals in the Mid-Atlantic are so lacking that density estimates for this species are not possible (DoN 2007). Therefore, gray seals will not be described further in this analysis.

We have reviewed Ocean Wind's species information—which summarizes available information regarding status and trends, distribution and habitat preferences, behavior and life history, and auditory capabilities of the potentially affected species—for accuracy and completeness and refer the reader to Sections 3 and 4 of the applications, as well as to NMFS' Stock Assessment Reports (SAR; *www.nmfs.noaa.gov/pr/sars/*), instead of reprinting all of the information here. Additional general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS's Web site (*www.nmfs.noaa.gov/pr/species/mammals/*). Table 2 lists all species with expected potential for occurrence in the NE Atlantic OCS and summarizes information related to the population or stock, including potential biological removal (PBR), where known. For taxonomy, we follow Committee on Taxonomy (2016). PBR, defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population, is considered in concert with known sources of ongoing anthropogenic mortality to assess the population-level effects of the anticipated mortality from a specific project (as described in NMFS's SARs). While no mortality is anticipated or authorized here, PBR and annual serious injury and mortality are included here as gross indicators of the status of the species and other threats. For status of species, we provide information regarding U.S. regulatory status under the MMPA and ESA.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study area. NMFS's stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. Survey abundance (as compared to stock or species abundance) is the total number of individuals estimated within the survey area, which may or may not align completely with a stock's geographic range as defined in the SARs. These surveys may also extend beyond U.S. waters.

Five species are considered to have the potential to co-occur with the proposed survey activities: Fin whale (*Balaenoptera physalus*), bottlenose dolphin (*Tursiops truncatus*), short-beaked common dolphin (*Delphinus delphis*), harbor porpoise (*Phocoena phocoena*), and harbor seal (*Phoca vitulina*) (Right Whale Consortium 2016). All managed stocks in this region are assessed in NMFS's U.S. 2016 Atlantic SARs and can be found here: *http://www.nmfs.noaa.gov/pr/species/.* All values presented in Table 2 are the most recent available at the time of publication and are available in the draft 2016 SARs.

TABLE 2—MARINE MAMMALS KNOWN TO OCCUR IN THE WATERS OFF THE NORTHWEST ATLANTIC OCS

Common name	Stock	NMFS MMPA and ESA status; strategic (Y/N) [1]	Stock abundance (CV, Nmin, most recent abundance survey) [2]	PBR [3]	Occurrence and seasonality in the NW Atlantic OCS
Toothed whale (Odontoceti)					
Atlantic white-sided dolphin (*Lagenorhynchus acutus*).	W. North Atlantic	-; N	48,819 (0.61; 30,403; n/a)	304	rare.
Atlantic spotted dolphin (*Stenella frontalis*).	W. North Atlantic	-; N	44,715 (0.43; 31,610; n/a)	316	rare.
Bottlenose dolphin (*Tursiops truncatus*).	W. North Atlantic, Offshore.	-; N	77,532 (0.40; 56,053; 2011).	561	Common year round.
Clymene Dolphin (*Stenella clymene*).	W. North Atlantic	-; N	Unknown (unk; unk; n/a).	Undet	rare.
Pantropical Spotted Dolphin (*Stenella attenuata*).	W. North Atlantic	-; N	3,333 (0.91; 1,733; n/a)	17	rare.
Risso's dolphin (*Grampus griseus*)	W. North Atlantic	-; N	18,250 (0.46; 12,619; n/a)	126	rare.

TABLE 2—MARINE MAMMALS KNOWN TO OCCUR IN THE WATERS OFF THE NORTHWEST ATLANTIC OCS—Continued

Common name	Stock	NMFS MMPA and ESA status; strategic (Y/N) [1]	Stock abundance (CV, Nmin, most recent abundance survey) [2]	PBR [3]	Occurrence and seasonality in the NW Atlantic OCS
Short-beaked common dolphin (*Delphinus delphis*).	W. North Atlantic	-; N	70,184 (0.28; 55,690; 2011).	557	Common year round.
Striped dolphin (*Stenella coeruleoalba*).	W. North Atlantic	-; N	54,807 (0.3; 42,804; n/a).	428	rare.
Spinner Dolphin (*Stenella longirostris*).	W. North Atlantic	-; N	Unknown (unk; unk; n/a).	Undet	rare.
White-beaked dolphin (*Lagenorhynchus albirostris*).	W. North Atlantic	-; N	2,003 (0.94; 1,023; n/a)	10	rare.
Harbor porpoise (*Phocoena phocoena*).	Gulf of Maine/Bay of Fundy.	-; N	79,833 (0.32; 61,415; 2011).	706	Common year round.
Killer whale (*Orcinus orca*)	W. North Atlantic	-; N	Unknown (unk; unk; n/a).	Undet	rare.
False killer whale (*Pseudorca crassidens*).	W. North Atlantic	-; Y	442 (1.06; 212; n/a)	2.1	rare.
Long-finned pilot whale (*Globicephala melas*).	W. North Atlantic	-; Y	5,636 (0.63; 3,464; n/a)	35	rare.
Short-finned pilot whale (*Globicephala macrorhynchus*).	W. North Atlantic	-; Y	21,515 (0.37; 15,913; n/a)	159	rare.
Sperm whale (*Physeter macrocephalus*).	North Atlantic	E; Y	2,288 (0.28; 1,815; n/a)	3.6	Year round in continental shelf and slope waters, occur seasonally to forage.
Pygmy sperm whale (*Kogia breviceps*).	W. North Atlantic	-; N	3,785 [b] (0.47; 2,598; n/a)	26	rare.
Dwarf sperm whale (*Kogia sima*) ..	W. North Atlantic	-; N	3,785 [b] (0.47; 2,598; n/a)	26	rare.
Cuvier's beaked whale (*Ziphius cavirostris*).	W. North Atlantic	-; N	6,532 (0.32; 5,021; n/a)	50	rare.
Blainville's beaked whale (*Mesoplodon densirostris*).	W. North Atlantic	-; N	7,092 [c] (0.54; 4,632; n/a)	46	rare.
Gervais' beaked whale (*Mesoplodon europaeus*).	W. North Atlantic	-; N	7,092 [c] (0.54; 4,632; n/a)	46	rare.
True's beaked whale (*Mesoplodon mirus*).	W. North Atlantic	-; N	7,092 [c] (0.54; 4,632; n/a)	46	rare.
Sowerby's Beaked Whale (*Mesoplodon bidens*).	W. North Atlantic	-; N	7,092 [c] (0.54; 4,632; n/a)	46	rare.
Melon-headed whale (*Peponocephala electra*).	W. North Atlantic	-; N	Unknown (unk; unk; n/a).	Undet	rare.
Baleen whales (Mysticeti)					
Minke whale (*Balaenoptera acutorostrata*).	Canadian East Coast	-; N	2,591 (0.81; 1,425; n/a)	162	Year round in continental shelf and slope waters, occur seasonally to forage.
Blue whale (*Balaenoptera musculus*).	W. North Atlantic	E; Y	Unknown (unk; 440; n/a).	0.9	Year round in continental shelf and slope waters, occur seasonally to forage.
Fin whale (*Balaenoptera physalus*)	W. North Atlantic	E; Y	1,618 (0.33; 1,234; n/a)	2.5	Year round in continental shelf and slope waters, occur seasonally to forage.
Humpback whale (*Megaptera novaeangliae*).	Gulf of Maine	-; N	823 (0; 823; n/a)	2.7	Common year round.
North Atlantic right whale (*Eubalaena glacialis*).	W. North Atlantic	E; Y	440 (0; 440; n/a)	1	Year round in continental shelf and slope waters, occur seasonally to forage.

TABLE 2—MARINE MAMMALS KNOWN TO OCCUR IN THE WATERS OFF THE NORTHWEST ATLANTIC OCS—Continued

Common name	Stock	NMFS MMPA and ESA status; strategic (Y/N) [1]	Stock abundance (CV, Nmin, most recent abundance survey) [2]	PBR [3]	Occurrence and seasonality in the NW Atlantic OCS
Sei whale (*Balaenoptera borealis*)	Nova Scotia	E; Y	357 (0.52; 236; n/a)	0.5	Year round in continental shelf and slope waters, occur seasonally to forage.
Earless seals (Phocidae)					
Gray seals (*Halichoerus grypus*) ...	North Atlantic	-; N	505,000 (unk; unk; n/a)	Undet	Unlikely.
Harbor seals (*Phoca vitulina*)	W. North Atlantic	-; N	75,834 (0.15; 66,884; 2012).	2,006	Common year round.
Hooded seals (*Cystophora cristata*).	W. North Atlantic	-; N	Unknown (unk; unk; n/a).	Undet	rare.
Harp seal (*Phoca groenlandica*)	North Atlantic	-; N	Unknown (unk; unk; n/a).	Undet	rare.

[1] ESA status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR (see footnote 3) or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable. For certain stocks, abundance estimates are actual counts of animals and there is no associated CV. The most recent abundance survey that is reflected in the abundance estimate is presented; there may be more recent surveys that have not yet been incorporated into the estimate. All values presented here are from the draft 2016 Pacific SARs.

[3] Potential biological removal, defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population size (OSP).

Fin Whales

Fin whales are common in waters of the U.S. Atlantic Exclusive Economic Zone (EEZ), principally from Cape Hatteras northward (Waring *et al.,* 2016). Fin whales are present north of 35-degree latitude in every season and are broadly distributed throughout the western North Atlantic for most of the year (Waring *et al.,* 2016). This area (east of Montauk Point) represents a major feeding ground for fin whales from March through October. Fin whales are found in small groups of up to 5 individuals (Brueggeman *et al.,* 1987).

The current abundance estimate for the western North Atlantic stock of fin whales is 1,618 with PBR at 2.5 animals (Waring *et al.,* 2016). This stock is listed as endangered under the ESA resulting in strategic and depleted status under the MMPA. The main threats to this stock are fishery interactions and vessel collisions (Waring *et al.,* 2016).

Bottlenose Dolphin

There are two distinct bottlenose dolphin morphotypes: The coastal and offshore forms in the western North Atlantic (Waring *et al.,* 2016). The offshore form is distributed primarily along the outer continental shelf and continental slope in the Northwest Atlantic Ocean from Georges Bank to the Florida Keys, and is the only type that may be present in the Lease Area.

The current abundance estimate for this stock is 77,532 with PBR at 561 (Waring *et al.,* 2016). The main threat to this species is interactions with fisheries. This species is not listed under the ESA and is not considered strategic or depleted under the MMPA.

Short-Beaked Common Dolphin

The short-beaked common dolphin is found world-wide in temperate to subtropical seas. In the North Atlantic, short-beaked common dolphins are commonly found over the continental shelf between the 100-m and 2000-m isobaths and over prominent underwater topography and east to the mid-Atlantic Ridge (Waring *et al.,* 2016). Only the western North Atlantic stock may be present in the Lease Area.

The current abundance estimate for this stock is 70,184 with PBR at 557 (Waring *et al.,* 2016). The main threat to this species is interactions with fisheries. This species is not listed under the ESA and is not considered strategic or depleted under the MMPA.

Harbor Porpoise

In the Lease Area, only the Gulf of Maine/Bay of Fundy stock may be present. This stock is found in U.S. and Canadian Atlantic waters and are concentrated in the northern Gulf of Maine and southern Bay of Fundy region, generally in waters less than 150 m deep (Waring *et al.,* 2016). They are seen from the coastline to deep waters (>1800 m; Westgate *et al.* 1998), although the majority of the population is found over the continental shelf (Waring *et al.,* 2016). Average group size for this stock in the Bay of Fundy is approximately 4 individuals (Palka 2007).

The current abundance estimate for this stock is 79,883, with PBR at 706 (Waring *et al.,* 2016). The main threat to this species is interactions with fisheries, with documented take in the U.S. northeast sink gillnet, mid-Atlantic gillnet, and northeast bottom trawl fisheries and in the Canadian herring weir fisheries (Waring *et al.,* 2016). This species is not listed under the ESA and is not considered strategic or depleted under the MMPA.

Harbor Seal

The harbor seal is found in all nearshore waters of the North Atlantic and North Pacific Oceans and adjoining seas above about 30° N. (Burns 2009). In the western North Atlantic, they are distributed from the eastern Canadian Arctic and Greenland south to southern New England and New York, and occasionally to the Carolinas (Waring *et al.,* 2016). Haulout and pupping sites are located off Manomet, MA and the Isles of Shoals, ME, but generally do not occur in areas in southern New England (Waring *et al.,* 2016).

The current abundance estimate for this stock is 75,834, with PBR at 2,006 (Waring *et al.*, 2016). The main threat to this species is interactions with fisheries. This species is not listed under the ESA and is not considered strategic or depleted under the MMPA.

Potential Effects of the Specified Activity on Marine Mammals and Their Habitat

This section includes a summary and discussion of the ways that components of the specified activity may impact marine mammals and their habitat. The *Estimated Take by Incidental Harassment* section later in this document will include a quantitative analysis of the number of individuals that are expected to be taken by this activity. The *Negligible Impact Analysis and Determination* section will consider the content of this section, the *Estimated Take by Incidental Harassment* section, and the *Proposed Mitigation* section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and how those impacts on individuals are likely to impact marine mammal species or stocks.

Background on Sound

Sound is a physical phenomenon consisting of minute vibrations that travel through a medium, such as air or water, and is generally characterized by several variables. Frequency describes the sound's pitch and is measured in Hz or kHz, while sound level describes the sound's intensity and is measured in decibels (dB). Sound level increases or decreases exponentially with each dB of change. The logarithmic nature of the scale means that each 10-dB increase is a 10-fold increase in acoustic power (and a 20-dB increase is then a 100-fold increase in power). A 10-fold increase in acoustic power does not mean that the sound is perceived as being 10 times louder, however. Sound levels are compared to a reference sound pressure (micro-Pascal) to identify the medium. For air and water, these reference pressures are ''re: 20 μPa'' and ''re: 1 μPa,'' respectively. Root mean square (RMS) is the quadratic mean sound pressure over the duration of an impulse. RMS is calculated by squaring all of the sound amplitudes, averaging the squares, and then taking the square root of the average (Urick 1975). RMS accounts for both positive and negative values; squaring the pressures makes all values positive so that they may be accounted for in the summation of pressure levels. This measurement is often used in the context of discussing behavioral effects, in part because behavioral effects, which often result from auditory cues, may be better expressed through averaged units rather than by peak pressures.

Acoustic Impacts

HRG survey equipment use and use of the DP thruster during the geophysical and geotechnical surveys may temporarily impact marine mammals in the area due to elevated in-water sound levels. Marine mammals are continually exposed to many sources of sound. Naturally occurring sounds such as lightning, rain, sub-sea earthquakes, and biological sounds (*e.g.,* snapping shrimp, whale songs) are widespread throughout the world's oceans. Marine mammals produce sounds in various contexts and use sound for various biological functions including, but not limited to: (1) Social interactions; (2) foraging; (3) orientation; and (4) predator detection. Interference with producing or receiving these sounds may result in adverse impacts. Audible distance, or received levels of sound depend on the nature of the sound source, ambient noise conditions, and the sensitivity of the receptor to the sound (Richardson *et al.,* 1995). Type and significance of marine mammal reactions to sound are likely dependent on a variety of factors including, but not limited to, (1) the behavioral state of the animal (*e.g.,* feeding, traveling, etc.); (2) frequency of the sound; (3) distance between the animal and the source; and (4) the level of the sound relative to ambient conditions (Southall *et al.,* 2007).

When considering the influence of various kinds of sound on the marine environment, it is necessary to understand that different kinds of marine life are sensitive to different frequencies of sound. Current data indicate that not all marine mammal species have equal hearing capabilities (Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008).

Animals are less sensitive to sounds at the outer edges of their functional hearing range and are more sensitive to a range of frequencies within the middle of their functional hearing range. For mid-frequency cetaceans, functional hearing estimates occur between approximately 150 Hz and 160 kHz with best hearing estimated to occur between approximately 10 to less than 100 kHz (Finneran *et al.,* 2005 and 2009, Natchtigall *et al.,* 2005 and 2008; Yuen *et al.,* 2005; Popov *et al.,* 2011; and Schlundt *et al.,* 2011).

On August 4, 2016, NMFS released its Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (NMFS 2016; 81 FR 51694). This new guidance established new thresholds for predicting onset of temporary (TTS) and permanent (PTS) threshold shifts for impulsive (*e.g.,* explosives and impact pile drivers) and non-impulsive (*e.g.,* vibratory pile drivers) sound sources. These acoustic thresholds are presented using dual metrics of cumulative sound exposure level (SELcum) and peak sound level (PK) for impulsive sounds and SELcum for non-impulsive sounds. The lower and/or upper frequencies for some of these functional hearing groups have been modified from those designated by Southall *et al.* (2007), and the revised generalized hearing ranges are presented in the new Guidance. The functional hearing groups and the associated frequencies are indicated in Table 3 below.

TABLE 3—MARINE MAMMAL HEARING GROUPS AND THEIR GENERALIZED HEARING RANGE

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, cephalorhynchid, *Lagenorhynchus cruciger* and *L. australis*).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.,* 2007) and PW pinniped (approximation).

When sound travels (propagates) from its source, its loudness decreases as the distance traveled by the sound increases. Thus, the loudness of a sound at its source is higher than the loudness of that same sound a kilometer (km) away. Acousticians often refer to the loudness of a sound at its source (typically referenced to one meter from the source) as the source level and the loudness of sound elsewhere as the received level (*i.e.,* typically the receiver). For example, a humpback whale 3 km from a device that has a source level of 230 dB may only be exposed to sound that is 160 dB loud, depending on how the sound travels through water (*e.g.,* spherical spreading (6 dB reduction with doubling of distance) was used in this example). As a result, it is important to understand the difference between source levels and received levels when discussing the loudness of sound in the ocean or its impacts on the marine environment.

As sound travels from a source, its propagation in water is influenced by various physical characteristics, including water temperature, depth, salinity, and surface and bottom properties that cause refraction, reflection, absorption, and scattering of sound waves. Oceans are not homogeneous and the contribution of each of these individual factors is extremely complex and interrelated. The physical characteristics that determine the sound's speed through the water will change with depth, season, geographic location, and with time of day (as a result, in actual active sonar operations, crews will measure oceanic conditions, such as sea water temperature and depth, to calibrate models that determine the path the sonar signal will take as it travels through the ocean and how strong the sound signal will be at a given range along a particular transmission path). As sound travels through the ocean, the intensity associated with the wavefront diminishes, or attenuates. This decrease in intensity is referred to as propagation loss, also commonly called transmission loss.

As mentioned previously in this document, five marine mammal species (four cetaceans and one pinniped) are likely to occur in the Lease Area. Of the four cetacean species likely to occur in the Lease Area, one classified as low-frequency cetaceans (*i.e.,* fin whale), two are classified as mid-frequency cetaceans (*i.e.,* Atlantic white-sided dolphin and bottlenose dolphin), and one is classified as a high-frequency cetacean (*i.e.,* harbor porpoise) (Southall *et al.,* 2007). A species' functional hearing group is a consideration when we analyze the effects of exposure to sound on marine mammals.

Hearing Impairment

Marine mammals may experience temporary or permanent hearing impairment when exposed to loud sounds. Hearing impairment is classified by TTS and PTS. There are no empirical data for onset of PTS in any marine mammal; therefore, PTS-onset must be estimated from TTS-onset measurements and from the rate of TTS growth with increasing exposure levels above the level eliciting TTS-onset. PTS is presumed to be likely if the hearing threshold is reduced by ≥ 40 dB (that is, 40 dB of TTS). PTS is considered auditory injury (Southall *et al.,* 2007) and occurs in a specific frequency range and amount. Irreparable damage to the inner or outer cochlear hair cells may cause PTS; however, other mechanisms are also involved, such as exceeding the elastic limits of certain tissues and membranes in the middle and inner ears and resultant changes in the chemical composition of the inner ear fluids (Southall *et al.,* 2007). Given the higher level of sound and longer durations of exposure necessary to cause PTS as compared with TTS, it is considerably less likely that PTS would occur during the proposed HRG and geotechnical survey.

Temporary Threshold Shift (TTS)

TTS is the mildest form of hearing impairment that can occur during exposure to a loud sound (Kryter 1985). While experiencing TTS, the hearing threshold rises and a sound must be stronger in order to be heard. At least in terrestrial mammals, TTS can last from minutes or hours to (in cases of strong TTS) days, can be limited to a particular frequency range, and can occur to varying degrees (*i.e.,* a loss of a certain number of dBs of sensitivity). For sound exposures at or somewhat above the TTS threshold, hearing sensitivity in both terrestrial and marine mammals recovers rapidly after exposure to the noise ends.

Marine mammal hearing plays a critical role in communication with conspecifics and in interpretation of environmental cues for purposes such as predator avoidance and prey capture. Depending on the degree (elevation of threshold in dB), duration (*i.e.,* recovery time), and frequency range of TTS and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious. For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that takes place during a time when the animals is traveling through the open ocean, where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during a time when communication is critical for successful mother/calf interactions could have more serious impacts if it were in the same frequency band as the necessary vocalizations and of a severity that it impeded communication. The fact that animals exposed to levels and durations of sound that would be expected to result in this physiological response would also be expected to have behavioral responses of a comparatively more severe or sustained nature is also notable and potentially of more importance than the simple existence of a TTS.

Currently, TTS data only exist for four species of cetaceans (bottlenose dolphin, beluga whale (*Delphinapterus leucas*), harbor porpoise, and Yangtze finless porpoise (*Neophocaena phocaenoides*)) and three species of pinnipeds (northern elephant seal (*Mirounga angustirostris*), harbor seal, and California sea lion (*Zalophus californianus*)) exposed to a limited number of sound sources (*i.e.,* mostly tones and octave-band noise) in laboratory settings (*e.g.,* Finneran *et al.,* 2002 and 2010; Nachtigall *et al.,* 2004; Kastak *et al.,* 2005; Lucke *et al.,* 2009; Mooney *et al.,* 2009; Popov *et al.,* 2011; Finneran and Schlundt, 2010). In general, harbor seals (Kastak *et al.,* 2005; Kastelein *et al.,* 2012a) and harbor porpoises (Lucke *et al.,* 2009; Kastelein *et al.,* 2012b) have a lower TTS onset than other measured pinniped or cetacean species. However, even for these animals, which are better able to hear higher frequencies and may be more sensitive to higher frequencies, exposures on the order of approximately 170 dB rms or higher for brief transient signals are likely required for even temporary (recoverable) changes in hearing sensitivity that would likely not be categorized as physiologically damaging (Lucke *et al.,* 2009). Additionally, the existing marine mammal TTS data come from a limited number of individuals within these species. There are no data available on noise-induced hearing loss for mysticetes. For summaries of data on TTS in marine mammals or for further discussion of TTS onset thresholds, please see Finneran (2016).

Scientific literature highlights the inherent complexity of predicting TTS onset in marine mammals, as well as the importance of considering exposure duration when assessing potential

impacts (Mooney *et al.,* 2009a, 2009b; Kastak *et al.,* 2007). Generally, with sound exposures of equal energy, quieter sounds (lower SPL) of longer duration were found to induce TTS onset more than louder sounds (higher SPL) of shorter duration (more similar to sub-bottom profilers). For intermittent sounds, less threshold shift will occur than from a continuous exposure with the same energy (some recovery will occur between intermittent exposures) (Kryter *et al.,* 1966; Ward 1997). For sound exposures at or somewhat above the TTS-onset threshold, hearing sensitivity recovers rapidly after exposure to the sound ends; intermittent exposures recover faster in comparison with continuous exposures of the same duration (Finneran *et al.,* 2010). NMFS considers TTS as Level B harassment that is mediated by physiological effects on the auditory system; however, NMFS does not consider TTS-onset to be the lowest level at which Level B harassment may occur.

Animals in the Lease Area during the HRG survey are unlikely to incur TTS hearing impairment due to the characteristics of the sound sources, which include low source levels (208 to 221 dB re 1 μPa-m) and generally very short pulses and duration of the sound. Even for high-frequency cetacean species (*e.g.,* harbor porpoises), which may have increased sensitivity to TTS (Lucke *et al.,* 2009; Kastelein *et al.,* 2012b), individuals would have to make a very close approach and also remain very close to vessels operating these sources in order to receive multiple exposures at relatively high levels, as would be necessary to cause TTS. Intermittent exposures—as would occur due to the brief, transient signals produced by these sources—require a higher cumulative SEL to induce TTS than would continuous exposures of the same duration (*i.e.,* intermittent exposure results in lower levels of TTS) (Mooney *et al.,* 2009a; Finneran *et al.,* 2010). Moreover, most marine mammals would more likely avoid a loud sound source rather than swim in such close proximity as to result in TTS. Kremser *et al.* (2005) noted that the probability of a cetacean swimming through the area of exposure when a sub-bottom profiler emits a pulse is small—because if the animal was in the area, it would have to pass the transducer at close range in order to be subjected to sound levels that could cause TTS and would likely exhibit avoidance behavior to the area near the transducer rather than swim through at such a close range. Further, the restricted beam shape of the sub-bottom profiler and other HRG survey equipment makes it unlikely that an animal would be exposed more than briefly during the passage of the vessel. Boebel *et al.* (2005) concluded similarly for single and multibeam echosounders and, more recently, Lurton (2016) conducted a modeling exercise and concluded similarly that likely potential for acoustic injury from these types of systems is negligible but that behavioral response cannot be ruled out. Animals may avoid the area around the survey vessels, thereby reducing exposure. Any disturbance to marine mammals is likely to be in the form of temporary avoidance or alteration of opportunistic foraging behavior near the survey location.

For the HRG survey activities, animals may avoid the area around the survey vessel, thereby reducing exposure. Any disturbance to marine mammals is more likely to be in the form of temporary avoidance or alteration of opportunistic foraging behavior near the survey location.

Masking

Masking is the obscuring of sounds of interest to an animal by other sounds, typically at similar frequencies. Marine mammals are highly dependent on sound, and their ability to recognize sound signals amid other sound is important in communication and detection of both predators and prey (Tyack 2000). Background ambient sound may interfere with or mask the ability of an animal to detect a sound signal even when that signal is above its absolute hearing threshold. Even in the absence of anthropogenic sound, the marine environment is often loud. Natural ambient sound includes contributions from wind, waves, precipitation, other animals, and (at frequencies above 30 kHz) thermal sound resulting from molecular agitation (Richardson *et al.,* 1995).

Background sound may also include anthropogenic sound, and masking of natural sounds can result when human activities produce high levels of background sound. Conversely, if the background level of underwater sound is high (*e.g.,* on a day with strong wind and high waves), an anthropogenic sound source would not be detectable as far away as would be possible under quieter conditions and would itself be masked. Ambient sound is highly variable on continental shelves (Myrberg 1978; Desharnais *et al.,* 1999). This results in a high degree of variability in the range at which marine mammals can detect anthropogenic sounds.

Although masking is a phenomenon which may occur naturally, the introduction of loud anthropogenic sounds into the marine environment at frequencies important to marine mammals increases the severity and frequency of occurrence of masking. For example, if a baleen whale is exposed to continuous low-frequency sound from an industrial source, this would reduce the size of the area around that whale within which it can hear the calls of another whale. The components of background noise that are similar in frequency to the signal in question primarily determine the degree of masking of that signal. In general, little is known about the degree to which marine mammals rely upon detection of sounds from conspecifics, predators, prey, or other natural sources. In the absence of specific information about the importance of detecting these natural sounds, it is not possible to predict the impact of masking on marine mammals (Richardson *et al.,* 1995). In general, masking effects are expected to be less severe when sounds are transient than when they are continuous. Masking is typically of greater concern for those marine mammals that utilize low-frequency communications, such as baleen whales, because of how far low-frequency sounds propagate.

Marine mammal communications would not likely be masked appreciably by the sub-bottom profiler signals given the directionality of the signal and the brief period when an individual mammal is likely to be within its beam. And while continuous sound from the DP thruster when in use is predicted to extend 500 m to the 120 dB threshold, the generally short duration of DP thruster use and low source levels, coupled with the likelihood of animals to avoid the sound source, would result in very little opportunity for this activity to mask the communication of local marine mammals for more than a brief period of time.

Non-Auditory Physical Effects (Stress)

Classic stress responses begin when an animal's central nervous system perceives a potential threat to its homeostasis. That perception triggers stress responses regardless of whether a stimulus actually threatens the animal; the mere perception of a threat is sufficient to trigger a stress response (Moberg 2000; Seyle 1950). Once an animal's central nervous system perceives a threat, it mounts a biological response or defense that consists of a combination of the four general biological defense responses: behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses.

In the case of many stressors, an animal's first and sometimes most economical (in terms of biotic costs) response is behavioral avoidance of the potential stressor or avoidance of continued exposure to a stressor. An animal's second line of defense to stressors involves the sympathetic part of the autonomic nervous system and the classical ''fight or flight'' response which includes the cardiovascular system, the gastrointestinal system, the exocrine glands, and the adrenal medulla to produce changes in heart rate, blood pressure, and gastrointestinal activity that humans commonly associate with ''stress.'' These responses have a relatively short duration and may or may not have significant long-term effect on an animal's welfare.

An animal's third line of defense to stressors involves its neuroendocrine systems; the system that has received the most study has been the hypothalamus-pituitary-adrenal system (also known as the HPA axis in mammals or the hypothalamus-pituitary-interrenal axis in fish and some reptiles). Unlike stress responses associated with the autonomic nervous system, virtually all neuro-endocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction (Moberg 1987; Rivier 1995), altered metabolism (Elasser *et al.,* 2000), reduced immune competence (Blecha 2000), and behavioral disturbance. Increases in the circulation of glucocorticosteroids (cortisol, corticosterone, and aldosterone in marine mammals; see Romano *et al.,* 2004) have been equated with stress for many years.

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and distress is the biotic cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose a risk to the animal's welfare. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other biotic function, which impairs those functions that experience the diversion. For example, when mounting a stress response diverts energy away from growth in young animals, those animals may experience stunted growth. When mounting a stress response diverts energy from a fetus, an animal's reproductive success and its fitness will suffer. In these cases, the animals will have entered a pre-pathological or pathological state which is called ''distress'' (Seyle 1950) or ''allostatic loading'' (McEwen and Wingfield 2003). This pathological state will last until the animal replenishes its biotic reserves sufficient to restore normal function. Note that these examples involved a long-term (days or weeks) stress response exposure to stimuli.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses have also been documented fairly well through controlled experiments; because this physiology exists in every vertebrate that has been studied, it is not surprising that stress responses and their costs have been documented in both laboratory and free-living animals (for examples see, Holberton *et al.,* 1996; Hood *et al.,* 1998; Jessop *et al.,* 2003; Krausman *et al.,* 2004; Lankford *et al.,* 2005; Reneerkens *et al.,* 2002; Thompson and Hamer, 2000). Information has also been collected on the physiological responses of marine mammals to exposure to anthropogenic sounds (Fair and Becker 2000; Romano *et al.,* 2002). For example, Rolland *et al.* (2012) found that noise reduction from reduced ship traffic in the Bay of Fundy was associated with decreased stress in North Atlantic right whales. In a conceptual model developed by the Population Consequences of Acoustic Disturbance (PCAD) working group, serum hormones were identified as possible indicators of behavioral effects that are translated into altered rates of reproduction and mortality.

Studies of other marine animals and terrestrial animals would also lead us to expect some marine mammals to experience physiological stress responses and, perhaps, physiological responses that would be classified as ''distress'' upon exposure to high frequency, mid-frequency and low-frequency sounds. For example, Jansen (1998) reported on the relationship between acoustic exposures and physiological responses that are indicative of stress responses in humans (for example, elevated respiration and increased heart rates). Jones (1998) reported on reductions in human performance when faced with acute, repetitive exposures to acoustic disturbance. Trimper *et al.* (1998) reported on the physiological stress responses of osprey to low-level aircraft noise while Krausman *et al.* (2004) reported on the auditory and physiology stress responses of endangered Sonoran pronghorn to military overflights. Smith *et al.* (2004a, 2004b), for example, identified noise-induced physiological transient stress responses in hearing-specialist fish (*i.e.,* goldfish) that accompanied short- and long-term hearing losses. Welch and Welch (1970) reported physiological and behavioral stress responses that accompanied damage to the inner ears of fish and several mammals.

Hearing is one of the primary senses marine mammals use to gather information about their environment and to communicate with conspecifics. Although empirical information on the relationship between sensory impairment (TTS, PTS, and acoustic masking) on marine mammals remains limited, it seems reasonable to assume that reducing an animal's ability to gather information about its environment and to communicate with other members of its species would be stressful for animals that use hearing as their primary sensory mechanism. Therefore, we assume that acoustic exposures sufficient to trigger onset PTS or TTS would be accompanied by physiological stress responses because terrestrial animals exhibit those responses under similar conditions (NRC 2003). More importantly, marine mammals might experience stress responses at received levels lower than those necessary to trigger onset TTS. Based on empirical studies of the time required to recover from stress responses (Moberg 2000), we also assume that stress responses are likely to persist beyond the time interval required for animals to recover from TTS and might result in pathological and pre-pathological states that would be as significant as behavioral responses to TTS.

In general, there are few data on the potential for strong, anthropogenic underwater sounds to cause non-auditory physical effects in marine mammals. Such effects, if they occur at all, would presumably be limited to short distances and to activities that extend over a prolonged period. The available data do not allow identification of a specific exposure level above which non-auditory effects can be expected (Southall *et al.,* 2007). There is no definitive evidence that any of these effects occur even for marine mammals in close proximity to an anthropogenic sound source. In addition, marine mammals that show behavioral avoidance of survey vessels and related sound sources are unlikely to incur non-auditory impairment or other physical effects. NMFS does not expect that the generally short-term, intermittent, and transitory HRG and

geotechnical activities would create conditions of long-term, continuous noise and chronic acoustic exposure leading to long-term physiological stress responses in marine mammals.

Behavioral Disturbance

Behavioral disturbance may include a variety of effects, including subtle changes in behavior (*e.g.,* minor or brief avoidance of an area or changes in vocalizations), more conspicuous changes in similar behavioral activities, and more sustained and/or potentially severe reactions, such as displacement from or abandonment of high-quality habitat. Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.,* species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors (*e.g.,* Richardson *et al.,* 1995; Wartzok *et al.,* 2003; Southall *et al.,* 2007; Weilgart, 2007; Archer *et al.,* 2010). Behavioral reactions can vary not only among individuals but also within an individual, depending on previous experience with a sound source, context, and numerous other factors (Ellison *et al.,* 2012), and can vary depending on characteristics associated with the sound source (*e.g.,* whether it is moving or stationary, number of sources, distance from the source). Please see Appendices B–C of Southall *et al.* (2007) for a review of studies involving marine mammal behavioral responses to sound.

Habituation can occur when an animal's response to a stimulus wanes with repeated exposure, usually in the absence of unpleasant associated events (Wartzok *et al.,* 2003). Animals are most likely to habituate to sounds that are predictable and unvarying. It is important to note that habituation is appropriately considered as a ''progressive reduction in response to stimuli that are perceived as neither aversive nor beneficial,'' rather than as, more generally, moderation in response to human disturbance (Bejder *et al.,* 2009). The opposite process is sensitization, when an unpleasant experience leads to subsequent responses, often in the form of avoidance, at a lower level of exposure. As noted, behavioral state may affect the type of response. For example, animals that are resting may show greater behavioral change in response to disturbing sound levels than animals that are highly motivated to remain in an area for feeding (Richardson *et al.,* 1995; NRC 2003; Wartzok *et al.,* 2003). Controlled experiments with captive marine mammals have shown pronounced behavioral reactions, including avoidance of loud sound sources (Ridgway *et al.,* 1997; Finneran *et al.,* 2003). Observed responses of wild marine mammals to loud, pulsed sound sources (typically seismic airguns or acoustic harassment devices) have been varied but often consist of avoidance behavior or other behavioral changes suggesting discomfort (Morton and Symonds, 2002; see also Richardson *et al.,* 1995; Nowacek *et al.,* 2007).

Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal. If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.,* Lusseau and Bejder, 2007; Weilgart 2007; NRC 2005). However, there are broad categories of potential response, which we describe in greater detail here, that include alteration of dive behavior, alteration of foraging behavior, effects to breathing, interference with or alteration of vocalization, avoidance, and flight.

Changes in dive behavior can vary widely and may consist of increased or decreased dive times and surface intervals as well as changes in the rates of ascent and descent during a dive (*e.g.,* Frankel and Clark 2000; Costa *et al.,* 2003; Ng and Leung 2003; Nowacek *et al.,* 2004; Goldbogen *et al.,* 2013a,b). Variations in dive behavior may reflect interruptions in biologically significant activities (*e.g.,* foraging) or they may be of little biological significance. The impact of an alteration to dive behavior resulting from an acoustic exposure depends on what the animal is doing at the time of the exposure and the type and magnitude of the response.

Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (*e.g.,* bubble nets or sediment plumes), or changes in dive behavior. As for other types of behavioral response, the frequency, duration, and temporal pattern of signal presentation, as well as differences in species sensitivity, are likely contributing factors to differences in response in any given circumstance (*e.g.,* Croll *et al.,* 2001; Nowacek *et al.;* 2004; Madsen *et al.,* 2006; Yazvenko *et al.,* 2007). A determination of whether foraging disruptions incur fitness consequences would require information on or estimates of the energetic requirements of the affected individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal.

Variations in respiration naturally vary with different behaviors and alterations to breathing rate as a function of acoustic exposure can be expected to co-occur with other behavioral reactions, such as a flight response or an alteration in diving. However, respiration rates in and of themselves may be representative of annoyance or an acute stress response. Various studies have shown that respiration rates may either be unaffected or could increase, depending on the species and signal characteristics, again highlighting the importance in understanding species differences in the tolerance of underwater noise when determining the potential for impacts resulting from anthropogenic sound exposure (*e.g.,* Kastelein *et al.,* 2001, 2005b, 2006; Gailey *et al.,* 2007).

Marine mammals vocalize for different purposes and across multiple modes, such as whistling, echolocation click production, calling, and singing. Changes in vocalization behavior in response to anthropogenic noise can occur for any of these modes and may result from a need to compete with an increase in background noise or may reflect increased vigilance or a startle response. For example, in the presence of potentially masking signals, humpback whales and killer whales have been observed to increase the length of their songs (Miller *et al.,* 2000; Fristrup *et al.,* 2003; Foote *et al.,* 2004), while right whales have been observed to shift the frequency content of their calls upward while reducing the rate of calling in areas of increased anthropogenic noise (Parks *et al.,* 2007b). In some cases, animals may cease sound production during production of aversive signals (Bowles *et al.,* 1994).

Avoidance is the displacement of an individual from an area or migration path as a result of the presence of a sound or other stressors, and is one of the most obvious manifestations of disturbance in marine mammals (Richardson *et al.,* 1995). For example, gray whales are known to change direction—deflecting from customary migratory paths—in order to avoid noise from seismic surveys (Malme *et al.,* 1984). Avoidance may be short-term,

with animals returning to the area once the noise has ceased (*e.g.,* Bowles *et al.,* 1994; Goold 1996; Stone *et al.,* 2000; Morton and Symonds, 2002; Gailey *et al.,* 2007). Longer-term displacement is possible, however, which may lead to changes in abundance or distribution patterns of the affected species in the affected region if habituation to the presence of the sound does not occur (*e.g.,* Blackwell *et al.,* 2004; Bejder *et al.,* 2006; Teilmann *et al.,* 2006).

A flight response is a dramatic change in normal movement to a directed and rapid movement away from the perceived location of a sound source. The flight response differs from other avoidance responses in the intensity of the response (*e.g.,* directed movement, rate of travel). Relatively little information on flight responses of marine mammals to anthropogenic signals exist, although observations of flight responses to the presence of predators have occurred (Connor and Heithaus, 1996). The result of a flight response could range from brief, temporary exertion and displacement from the area where the signal provokes flight to, in extreme cases, marine mammal strandings (Evans and England, 2001). However, it should be noted that response to a perceived predator does not necessarily invoke flight (Ford and Reeves, 2008) and whether individuals are solitary or in groups may influence the response.

Behavioral disturbance can also impact marine mammals in more subtle ways. Increased vigilance may result in costs related to diversion of focus and attention (*i.e.,* when a response consists of increased vigilance, it may come at the cost of decreased attention to other critical behaviors such as foraging or resting). These effects have generally not been demonstrated for marine mammals, but studies involving fish and terrestrial animals have shown that increased vigilance may substantially reduce feeding rates (*e.g.,* Beauchamp and Livoreil, 1997; Fritz *et al.,* 2002; Purser and Radford, 2011). In addition, chronic disturbance can cause population declines through reduction of fitness (*e.g.,* decline in body condition) and subsequent reduction in reproductive success, survival, or both (*e.g.,* Harrington and Veitch, 1992; Daan *et al.,* 1996; Bradshaw *et al.,* 1998). However, Ridgway *et al.* (2006) reported that increased vigilance in bottlenose dolphins exposed to sound over a five-day period did not cause any sleep deprivation or stress effects.

Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (24-hour cycle). Disruption of such functions resulting from reactions to stressors such as sound exposure are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.,* 2007). Consequently, a behavioral response lasting less than one day and not recurring on subsequent days is not considered particularly severe unless it could directly affect reproduction or survival (Southall *et al.,* 2007). Note that there is a difference between multi-day substantive behavioral reactions and multi-day anthropogenic activities. For example, just because an activity lasts for multiple days does not necessarily mean that individual animals are either exposed to activity-related stressors for multiple days or, further, exposed in a manner resulting in sustained multi-day substantive behavioral responses.

Marine mammals are likely to avoid the HRG survey activity, especially the naturally shy harbor porpoise, while the harbor seals might be attracted to them out of curiosity. However, because the sub-bottom profilers and other HRG survey equipment operate from a moving vessel, and the maximum radius to the 160 dB harassment threshold is less than 200 m, the area and time that this equipment would be affecting a given location is very small. Further, once an area has been surveyed, it is not likely that it will be surveyed again, therefore reducing the likelihood of repeated HRG-related impacts within the survey area. And while the drill ship using DP thrusters will generally remain stationary during geotechnical survey activities, the short duration (up to 12 days) of the DP thruster use would likely result in only short-term and temporary avoidance of the area, rather than permanent abandonment, by marine mammals.

We have also considered the potential for severe behavioral responses such as stranding and associated indirect injury or mortality from Ocean Wind's use of HRG survey equipment, on the basis of a 2008 mass stranding of approximately one hundred melon-headed whales in a Madagascar lagoon system. An investigation of the event indicated that use of a high-frequency mapping system (12-kHz multibeam echosounder) was the most plausible and likely initial behavioral trigger of the event, while providing the caveat that there is no unequivocal and easily identifiable single cause (Southall *et al.,* 2013). The investigatory panel's conclusion was based on (1) very close temporal and spatial association and directed movement of the survey with the stranding event; (2) the unusual nature of such an event coupled with previously documented apparent behavioral sensitivity of the species to other sound types (Southall *et al.,* 2006; Brownell *et al.,* 2009); and (3) the fact that all other possible factors considered were determined to be unlikely causes. Specifically, regarding survey patterns prior to the event and in relation to bathymetry, the vessel transited in a north-south direction on the shelf break parallel to the shore, ensonifying large areas of deep-water habitat prior to operating intermittently in a concentrated area offshore from the stranding site; this may have trapped the animals between the sound source and the shore, thus driving them towards the lagoon system. The investigatory panel systematically excluded or deemed highly unlikely nearly all potential reasons for these animals leaving their typical pelagic habitat for an area extremely atypical for the species (*i.e.,* a shallow lagoon system). Notably, this was the first time that such a system has been associated with a stranding event. The panel also noted several site- and situation-specific secondary factors that may have contributed to the avoidance responses that led to the eventual entrapment and mortality of the whales. Specifically, shoreward-directed surface currents and elevated chlorophyll levels in the area preceding the event may have played a role (Southall *et al.,* 2013). The report also notes that prior use of a similar system in the general area may have sensitized the animals and also concluded that, for odontocete cetaceans that hear well in higher frequency ranges where ambient noise is typically quite low, high-power active sonars operating in this range may be more easily audible and have potential effects over larger areas than low frequency systems that have more typically been considered in terms of anthropogenic noise impacts. It is, however, important to note that the relatively lower output frequency, higher output power, and complex nature of the system implicated in this event, in context of the other factors noted here, likely produced a fairly unusual set of circumstances that indicate that such events would likely remain rare and are not necessarily relevant to use of lower-power, higher-frequency systems more commonly used for HRG survey applications. The risk of similar events recurring may be very low, given the extensive use of active acoustic systems used for scientific and navigational purposes worldwide on a daily basis and the lack of direct evidence of such responses previously reported.

Tolerance

Numerous studies have shown that underwater sounds from industrial activities are often readily detectable by marine mammals in the water at distances of many km. However, other studies have shown that marine mammals at distances more than a few km away often show no apparent response to industrial activities of various types (Miller *et al.,* 2005). This is often true even in cases when the sounds must be readily audible to the animals based on measured received levels and the hearing sensitivity of that mammal group. Although various baleen whales, toothed whales, and (less frequently) pinnipeds have been shown to react behaviorally to underwater sound from sources such as airgun pulses or vessels under some conditions, at other times, mammals of all three types have shown no overt reactions (*e.g.,* Malme *et al.,* 1986; Richardson *et al.,* 1995; Madsen and Mohl 2000; Croll *et al.,* 2001; Jacobs and Terhune 2002; Madsen *et al.,* 2002; Miller *et al.,* 2005). In general, pinnipeds seem to be more tolerant of exposure to some types of underwater sound than are baleen whales. Richardson *et al.* (1995) found that vessel sound does not seem to strongly affect pinnipeds that are already in the water. Richardson *et al.* (1995) went on to explain that seals on haul-outs sometimes respond strongly to the presence of vessels and at other times appear to show considerable tolerance of vessels, and Brueggeman *et al.* (1992) observed ringed seals (*Pusa hispida*) hauled out on ice pans displaying short-term escape reactions when a ship approached within 0.16–0.31 mi (0.25–0.5 km). Due to the relatively high vessel traffic in the Lease Area it is possible that marine mammals are habituated to noise (*e.g.,* DP thrusters) from project vessels in the area.

Vessel Strike

Ship strikes of marine mammals can cause major wounds, which may lead to the death of the animal. An animal at the surface could be struck directly by a vessel, a surfacing animal could hit the bottom of a vessel, or a vessel's propeller could injure an animal just below the surface. The severity of injuries typically depends on the size and speed of the vessel (Knowlton and Kraus 2001; Laist *et al.,* 2001; Vanderlaan and Taggart 2007).

The most vulnerable marine mammals are those that spend extended periods of time at the surface in order to restore oxygen levels within their tissues after deep dives (*e.g.,* the sperm whale). In addition, some baleen whales, such as the North Atlantic right whale, seem generally unresponsive to vessel sound, making them more susceptible to vessel collisions (Nowacek *et al.,* 2004). These species are primarily large, slow moving whales. Smaller marine mammals (*e.g.,* bottlenose dolphin) move quickly through the water column and are often seen riding the bow wave of large ships. Marine mammal responses to vessels may include avoidance and changes in dive pattern (NRC 2003).

An examination of all known ship strikes from all shipping sources (civilian and military) indicates vessel speed is a principal factor in whether a vessel strike results in death (Knowlton and Kraus 2001; Laist *et al.,* 2001; Jensen and Silber 2003; Vanderlaan and Taggart 2007). In assessing records with known vessel speeds, Laist *et al.* (2001) found a direct relationship between the occurrence of a whale strike and the speed of the vessel involved in the collision. The authors concluded that most deaths occurred when a vessel was traveling in excess of 24.1 km/h (14.9 mph; 13 kn). Given the slow vessel speeds and predictable course necessary for data acquisition, ship strike is unlikely to occur during the geophysical and geotechnical surveys. Marine mammals would be able to easily avoid the applicant's vessel due to the slow speeds and are likely already habituated to the presence of numerous vessels in the area. Further, Ocean Wind shall implement measures (*e.g.,* vessel speed restrictions and separation distances; see *Proposed Mitigation Measures*) set forth in the BOEM Lease to reduce the risk of a vessel strike to marine mammal species in the Lease Area.

There are no rookeries or mating grounds known to be biologically important to marine mammals within the proposed project area. The area is an important feeding area for fin whales. There is no designated critical habitat for any ESA-listed marine mammals. NMFS' regulations at 50 CFR part 224 designated the nearshore waters of the Mid-Atlantic Bight as the Mid-Atlantic U.S. Seasonal Management Area (SMA) for right whales in 2008. Mandatory vessel speed restrictions (less than 10 knots) are in place in that SMA from November 1 through April 30 to reduce the threat of collisions between ships and right whales around their migratory route and calving grounds.

Bottom disturbance associated with the HRG survey activities may include grab sampling to validate the seabed classification obtained from the multibeam echosounder/sidescan sonar data. This will typically be accomplished using a Mini-Harmon Grab with 0.1 m^2 sample area or the slightly larger Harmon Grab with a 0.2 m^2 sample area. Bottom disturbance associated with the geotechnical survey activities will consist of the 8 deep bore holes of approximately 3 to 4 inches (in; 7.6 to 10.1 centimeters (cm)) diameter, the 30 shallow CPTs of up to approximately 2 in (5 cm) in diameter, and the 8 deep CPTs of approximately 2 in (5 cm) in diameter. Impact on marine mammal habitat from these activities will be temporary, insignificant, and discountable.

Because of the temporary nature of the disturbance, the availability of similar habitat and resources (*e.g.,* prey species) in the surrounding area, and the lack of important or unique marine mammal habitat, the impacts to marine mammals and the food sources that they utilize are not expected to cause significant or long-term consequences for individual marine mammals or their populations.

Estimated Take

This section provides an estimate of the number of incidental takes proposed for authorization through this IHA, which will inform both NMFS' consideration of whether the number of takes is ''small'' and the negligible impact determination.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would be by Level B harassment only, in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to HRG and geotechnical surveys. Based on the nature of the activity, the short duration of activities, and the small Level A isopleths (less than 3 m for all sources), Level A harassment is neither anticipated nor proposed to be authorized. The death of a marine mammal is also a type of incidental take. However, as described previously, no mortality is anticipated or proposed to be authorized for this activity. Below we describe how the take is estimated for this project.

Project activities that have the potential to harass marine mammals, as defined by the MMPA, include

underwater noise from operation of the HRG survey sub-bottom profilers and noise propagation associated with the use of DP thrusters during geotechnical survey activities that require the use of a DP drill ship. NMFS anticipates that impacts to marine mammals would be in the form of behavioral harassment, and no take by injury, serious injury, or mortality is proposed.

The basis for the take estimate is the number of marine mammals that would be exposed to sound levels in excess of NMFS' Level B harassment criteria for impulsive noise (160 dB re 1 µPa (rms) and continuous noise (120 dB re 1 µPa (rms)), which is generally determined by overlaying the area ensonified above NMFS acoustic thresholds for harassment within a day with the density of marine mammals, and multiplying by the number of days. NMFS' current acoustic thresholds for estimating take are shown in Table 4 below.

TABLE 4—NMFS'S ACOUSTIC EXPOSURE CRITERIA

Criterion	Definition	Threshold
Level B harassment (underwater) ...	Behavioral disruption	160 dB (impulsive source)/120 dB (continuous source) (rms).
Level B harassment (airborne)	Behavioral disruption	90 dB (harbor seals)/100 dB (other pinnipeds) (unweighted).

Modeling took into consideration sound sources using the potential operational parameters, bathymetry, geoacoustic properties of the Lease Area, time of year, and marine mammal hearing ranges. Results from the hydroacoustic modeling and measurements showed that estimated maximum distance to the 160 dB re 1 µPa (rms) MMPA threshold for all water depths for the HRG survey sub-bottom profilers (the HRG survey equipment with the greatest potential for effect on marine mammal) was approximately 75.28 m from the source using practical spreading (Subacoustech 2016), and the estimated maximum critical distance to the 120 dB re 1 µPa (rms) MMPA threshold for all water depths for the drill ship DP thruster was approximately 500 m from the source (Subacoustech 2016). Ocean Wind and NMFS believe that these estimates represent the a conservative scenario and that the actual distances to the Level B harassment threshold may be shorter, as practical spreading (15logR) was used to estimate the ensonified area here and there are some sound measurements taken in the Northeast that suggest a higher spreading coefficient (which would result in a shorter distance) may be applicable.

Ocean Wind estimated species densities within the proposed project area in order to estimate the number of marine mammal exposures to sound levels above the 120 dB Level B harassment threshold for continuous noise (*i.e.,* DP thrusters) and the 160 dB Level B harassment threshold for intermittent, impulsive noise (*i.e.,* sub-bottom profiler). Research indicates that marine mammals generally have extremely fine auditory temporal resolution and can detect each signal separately (*e.g.,* Au *et al.,* 1988; Dolphin *et al.,* 1995; Supin and Popov 1995; Mooney *et al.,* 2009b), especially for species with echolocation capabilities. Therefore, it is likely that marine mammals would perceive the acoustic signals associated with the HRG survey equipment as being intermittent rather than continuous, and we base our takes from these sources on exposures to the 160 dB threshold.

The data used as the basis for estimating cetacean density (''D'') for the Lease Area are sightings per unit effort (SPUE) derived by Duke University (Roberts *et al.,* 2016). For pinnipeds, the only available comprehensive data for seal abundance is the Northeast Navy Operations Area (OPAREA) Density Estimates (DoN 2007). SPUE (or, the relative abundance of species) is derived by using a measure of survey effort and number of individual cetaceans sighted. SPUE allows for comparison between discrete units of time (*i.e.* seasons) and space within a project area (Shoop and Kenney, 1992). The Duke University (Roberts *et al.,* 2016) cetacean density data represent models derived from aggregating line-transect surveys conducted over 23 years by 5 institutions (NOAA NMFS Northeast Fisheries Science Center (NEFSC), New Jersey Department of Environmental Protection (NJDEP), NOAA NMFS Southeast Fisheries Science Center (SEFSC), University of North Carolina Wilmington (UNCW), Virginia Aquarium & Marine Science Center (VAMSC)), the results of which are freely available online at the Ocean Biogeographic Information System Spatial Ecological Analysis of Megavertebrate Populations (OBIS–SEAMAP) repository. Monthly density values were within the survey area were averaged by season to provide seasonal density estimates. The OPAREA Density Estimates (DoN 2007) used for pinniped densities were based on data collected through NMFS NWFSC aerial surveys conducted between 1998 and 2005.

The Zone of influence (ZOI) is the extent of the ensonified zone in a given day. The ZOI was calculated using the following equations:

- Stationary source (*e.g.* DP thruster): πr^2
- Mobile source (*e.g.* sparkers): (distance/day * 2r) + πr^2

Where distance is the maximum survey trackline per day (177.6 km) and r is the distance to the 160 dB (for impulsive sources) and 120 dB (for non-impulsive sources) isopleths. The isopleths were calculated using practical spreading.

Estimated takes were calculated by multiplying the species density (animals per km^2) by the appropriate ZOI, multiplied by the number of appropriate days (*e.g.* 42 for HRG activities or 12 for geotechnical activities) of the specified activity. A detailed description of the acoustic modeling used to calculate zones of influence is provided in Ocean Wind's IHA application (also see the discussion in the *Mitigation* section below).

Ocean Wind used a ZOI of 26.757 km^2 and a survey period of 42 days, which includes estimated weather downtime, to estimate take from use of the HRG survey equipment during geophysical survey activities. The ZOI is based on the worst case (since it assumes the higher powered GeoSource 800 sparker will be operating all the time) and a maximum survey trackline of 110.4 mi (177.6 km) per day. Based on the proposed HRG survey schedule (June 2017), take calculations were based on the spring seasonal species density as derived from Roberts et al. (2016) for cetaceans and seasonal OPAREA density estimates (DoN, 2007) for pinnipeds. The resulting take estimates (rounded to the nearest whole number) are presented in Table 6.

TABLE 6—ESTIMATED LEVEL B HARASSMENT TAKES FOR HRG SURVEY ACTIVITIES

Species	Density for spring (number/km²)	Calculated take (number)	Requested take authorization (number)	Percentage of stock potentially affected
North Atlantic Right Whale	.0000	0.00	0	0
Humpback Whale	.0001	0.11	0	0
Fin Whale	.0008	0.89	*5	0.061
Sperm whale	.0001	0.11	0	0
Minke Whale	.0002	0.22	0	0
Bottlenose Dolphin	.2534	284.7	285	0.385
Short beaked common Dolphin	.0282	31.69	32	0.047
Harbor Porpoise	.0012	1.34	*4	0.006
Harbor Seal	0.0000	0.00	0	0

* Requested take authorization was increased to account for average group size of fin whales (5) and harbor porpoise (4).

Ocean Wind used a ZOI of 0.31 m² (0.79 km²) and a maximum DP thruster use period of 12 days to estimate take from use of the DP thruster during geotechnical survey activities. The ZOI represents the field-verified distance to the 120 dB isopleth for DP thruster use. Based on the proposed geotechnical survey schedule (September 2017), take calculations were based on the fall seasonal species density estimates (Roberts *et al.,* 2016; DoN, 2007) (Table 7). The resulting take estimates (rounded to the nearest whole number) based upon these conservative assumptions for bottlenose dolphins and harbor seals are presented in Table 7. These numbers are based on 12 days and represent only 0.001 percent of the stock for each of these 2 species. Take estimates were increased to take into account average group size where needed (fin whale and harbor porpoise). Take calculations for North Atlantic right whale, humpback whale, sperm whale, and minke whale are at or near zero (refer to the Ocean Wind application); therefore, no takes for these species are requested or proposed for authorization.

TABLE 7—ESTIMATED LEVEL B HARASSMENT TAKES FOR GEOTECHNICAL SURVEY ACTIVITIES

Species	Density for fall (number/100 km²)	Calculated take (number)	Requested take authorization (number)	Percentage of stock potentially affected
Bottlenose Dolphin	11.44	1.08	1	0.001
Harbor seal	9.74	0.92	1	0.001

Ocean Wind's requested take numbers are provided in Tables 6 and 7 and are also the number of takes NMFS is proposing to authorize. Ocean Wind's calculations do not take into account whether a single animal is harassed multiple times or whether each exposure is a different animal. Therefore, the numbers in Tables 6 and 7 are the maximum number of animals that may be harassed during the HRG and geotechnical surveys (*i.e.,* Ocean Wind assumes that each exposure event is a different animal). These estimates do not account for prescribed mitigation measures that Ocean Wind would implement during the specified activities and the fact that shutdown/powerdown procedures shall be implemented if an animal enters within 200 m of the vessel during HRG activities, and 500 m during geotechnical activities, further reducing the potential for any takes to occur during these activities.

Ocean Wind used NMFS' Guidance (NMFS 2016) to determine sound exposure thresholds to determine when an activity that produces sound might result in impacts to a marine mammal such that a take by injury, in the form of PTS, might occur. The functional hearing groups and the associated PTS onset acoustic thresholds are indicated in Table 8 below. Ocean Wind used the user spreadsheet to calculate the isopleth for the loudest source (sparker, sub-bottom profiler). The sub-bottom profiler was calculated with the following conditions: Source level at 172.4 rms, vessel velocity of 2.058 m/s, repetition rate of 0.182, pulse duration of 22 ms and a weighting factor adjustment of 10 based on the spectrogram for this equipment (Gardline 2016). Isopleths were less than 3 m for all hearing groups; therefore, no Level A takes are requested. The Geo-source sparker model used the following parameters: source level at 188.7 rms Source level, vessel velocity of 2.058 meters per second (m/s), repetition rate of 0.25 seconds, pulse duration of 10 ms and weighting factor adjustment of 3 based on the spectrograms for this equipment. Isopleths were less than 2 m for all hearing groups; therefore, no Level A takes are requested. The DP thruster was defined as non-impulsive static continuous source with an extrapolated source level of 150 dB rms based on far field measurements (Subacoustech 2016), an activity duration of 4 hours and weighting factor adjustment of 2. The transmission loss coefficient of 11.1 was used based on the slope of best fit from field measurements (Subacoustech 2016). Isopleths were less than 1 m for all hearing groups; therefore, no Level A take are requested. No level A take is requested or proposed to be authorized for any of the sources used during HRG and geotechnical surveys.

TABLE 8—SUMMARY OF PTS ONSET ACOUSTIC THRESHOLDS [1]

Hearing group	PTS onset acoustic thresholds * (received level)	
	Impulsive	Non-impulsive
Low-frequency cetaceans	*Cell: 1* Lpk,flat: 219 dB; LE,LF,24h: 183 dB	*Cell: 2* LE,LF,24h: 199 dB.
Mid-frequency cetaceans	*Cell: 3* Lpk,flat: 230 dB; LE,MF,24h: 185 dB	*Cell: 4* LE,MF,24h: 198 dB.
High-frequency cetaceans	*Cell: 5* Lpk,flat: 202 dB; LE,HF,24h: 155 dB	*Cell: 6* LE,HF,24h: 173 dB.
Phocid Pinnipeds (underwaters)	*Cell: 7* Lpk,flat: 218 dB; LE,PW,24h: 185 dB	*Cell: 8* LE,PW,24h: 201 dB.
Otariid Pinnipeds (underwater)	*Cell: 9* Lpk,flat: 232 dB; LE,OW,24h: 203 dB	*Cell: 10* LE,OW,24h: 219 dB.

[1] NMFS 2016.

Proposed Mitigation

In order to issue an IHA under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, ''and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking'' for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully balance two primary factors: (1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat, which considers the nature of the potential adverse impact being mitigated (likelihood, scope, range), as well as the likelihood that the measure will be effective if implemented; and the likelihood of effective implementation, and; (2) the practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

With NMFS' input during the application process, and as per the BOEM Lease, Ocean Wind is proposing the following mitigation measures during site characterization surveys utilizing HRG survey equipment and use of the DP thruster. The mitigation measures outlined in this section are based on protocols and procedures that have been successfully implemented and resulted in no observed take of marine mammals for similar offshore projects and previously approved by NMFS (ESS 2013; Dominion 2013 and 2014).

Marine Mammal Exclusion Zones

Protected species observers (PSOs) will monitor the following exclusion/monitoring zones for the presence of marine mammals:

- A 200-m exclusion zone during HRG surveys (this exceeds the estimated Level B harassment isopleth).
- A 500-m monitoring zone during the use of DP thrusters during geotechnical survey activities (this is equal to the Level B harassment isopleth).

The 200 m exclusion zone is the default exclusion zone specified in stipulation 4.4.6.1 of the New Jersey OCS–A 0498 Lease Agreement. The 500 m exclusion zone is based on field-verified distances established during similar survey work conducted within the Bay State Wind Lease Area (Subacoustech 2016).

Visual Monitoring

Visual monitoring of the established exclusion zone(s) for the HRG and geotechnical surveys will be performed by qualified and NMFS-approved PSOs, the resumes of whom will be provided to NMFS for review and approval prior to the start of survey activities. An observer team comprising a minimum of four NMFS-approved PSOs and two certified Passive Acoustic Monitoring (PAM) operators (PAM operators will not function as PSOs), operating in shifts, will be stationed aboard either the survey vessel or a dedicated PSO-vessel. PSOs and PAM operators will work in shifts such that no one monitor will work more than 4 consecutive hours without a 2-hour break or longer than 12 hours during any 24-hour period. During daylight hours the PSOs will rotate in shifts of one on and three off, while during nighttime operations PSOs will work in pairs. The PAM operators will also be on call as necessary during daytime operations should visual observations become impaired. Each PSO will monitor 360 degrees of the field of vision.

PSOs will be responsible for visually monitoring and identifying marine mammals approaching or within the established exclusion zone(s) during survey activities. It will be the responsibility of the Lead PSO on duty to communicate the presence of marine mammals as well as to communicate and enforce the action(s) that are necessary to ensure mitigation and monitoring requirements are implemented as appropriate. PAM operators will communicate detected vocalizations to the Lead PSO on duty, who will then be responsible for implementing the necessary mitigation procedures. A mitigation and monitoring communications flow diagram has been included as Appendix A in the IHA application.

PSOs will be equipped with binoculars and have the ability to estimate distances to marine mammals located in proximity to the vessel and/or exclusion zone using range finders. Reticulated binoculars will also be available to PSOs for use as appropriate based on conditions and visibility to support the siting and monitoring of marine species. Digital single-lens reflex camera equipment will be used to record sightings and verify species identification. During night operations, PAM (see *Passive Acoustic Monitoring* requirements below) and night-vision equipment in combination with infrared technology will be used (Additional details and specifications are provided in Ocean Wind's application in Appendix B for night-vision devices and Appendix C for infrared video monitoring technology). Position data will be recorded using hand-held or

vessel global positioning system (GPS) units for each sighting.

The PSOs will begin observation of the exclusion zone(s) at least 60 minutes prior to ramp-up of HRG survey equipment. Use of noise-producing equipment will not begin until the exclusion zone is clear of all marine mammals for at least 60 minutes, as per the requirements of the BOEM Lease.

If a marine mammal is detected approaching or entering the 200-m exclusion zones during the HRG survey, or the 500-m monitoring zone during DP thrusters use, the vessel operator would adhere to the shutdown (during HRG survey) or powerdown (during DP thruster use) procedures described below to minimize noise impacts on the animals.

At all times, the vessel operator will maintain a separation distance of 500 m from any sighted North Atlantic right whale as stipulated in the *Vessel Strike Avoidance* procedures described below. These stated requirements will be included in the site-specific training to be provided to the survey team.

Vessel Strike Avoidance

The Applicant will ensure that vessel operators and crew maintain a vigilant watch for cetaceans and pinnipeds and slow down or stop their vessels to avoid striking these species. Survey vessel crew members responsible for navigation duties will receive site-specific training on marine mammal and sea turtle sighting/reporting and vessel strike avoidance measures. Vessel strike avoidance measures will include the following, except under extraordinary circumstances when complying with these requirements would put the safety of the vessel or crew at risk:

- All vessel operators will comply with 10 knot (<18.5 km per hour [km/h]) speed restrictions in any Dynamic Management Area (DMA). In addition, all vessels operating from November 1 through July 31 will operate at speeds of 10 knots (<18.5 km/h) or less.
- All survey vessels will maintain a separation distance of 500 m or greater from any sighted North Atlantic right whale.
- If underway, vessels must steer a course away from any sited North Atlantic right whale at 10 knots (<18.5 km/h) or less until the 500 m minimum separation distance has been established. If a North Atlantic right whale is sited in a vessel's path, or within 100 m to an underway vessel, the underway vessel must reduce speed and shift the engine to neutral. Engines will not be engaged until the North Atlantic right whale has moved outside of the vessel's path and beyond 100 m. If stationary, the vessel must not engage engines until the North Atlantic right whale has moved beyond 100 m.
- All vessels will maintain a separation distance of 100 m or greater from any sighted non-delphinoid (*i.e.,* mysticetes and sperm whales) cetaceans. If sighted, the vessel underway must reduce speed and shift the engine to neutral and must not engage the engines until the non-delphinoid cetacean has moved outside of the vessel's path and beyond 100 m. If a survey vessel is stationary, the vessel will not engage engines until the non-delphinoid cetacean has moved out of the vessel's path and beyond 100 m.
- All vessels will maintain a separation distance of 50 m or greater from any sighted delphinoid cetacean. Any vessel underway will remain parallel to a sighted delphinoid cetacean's course whenever possible and avoid excessive speed or abrupt changes in direction. Any vessel underway reduces vessel speed to 10 knots or less when pods (including mother/calf pairs) or large assemblages of delphinoid cetaceans are observed. Vessels may not adjust course and speed until the delphinoid cetaceans have moved beyond 50 m and/or abeam (*i.e.,* moving away and at a right angle to the centerline of the vessel) of the underway vessel.
- All vessels will maintain a separation distance of 50 m (164 ft) or greater from any sighted pinniped.

The training program will be provided to NMFS for review and approval prior to the start of surveys. Confirmation of the training and understanding of the requirements will be documented on a training course log sheet. Signing the log sheet will certify that the crew members understand and will comply with the necessary requirements throughout the survey event.

Seasonal Operating Requirements

Between watch shifts, members of the monitoring team will consult the NMFS North Atlantic right whale reporting systems for the presence of North Atlantic right whales throughout survey operations. The proposed survey activities will, however, occur outside of the SMA located off the coasts of Delaware and New Jersey. The proposed survey activities will also occur in June/July and September, which is outside of the seasonal mandatory speed restriction period for this SMA (November 1 through April 30).

Throughout all survey operations, Ocean Wind will monitor the NMFS North Atlantic right whale reporting systems for the establishment of a DMA. If NMFS should establish a DMA in the Lease Area under survey, within 24 hours of the establishment of the DMA Ocean Wind will work with NMFS to shut down and/or alter the survey activities to avoid the DMA.

Passive Acoustic Monitoring

As per the BOEM Lease, alternative monitoring technologies (*e.g.,* active or passive acoustic monitoring) are required if a Lessee intends to conduct geophysical surveys at night or when visual observation is otherwise impaired. To support 24-hour HRG survey operations, Ocean Wind will use certified PAM operators with experience reviewing and identifying recorded marine mammal vocalizations, as part of the project monitoring during nighttime operations to provide for optimal acquisition of species detections at night, or as needed during periods when visual observations may be impaired. In addition, PAM systems shall be employed during daylight hours to support system calibration and PSO and PAM team coordination, as well as in support of efforts to evaluate the effectiveness of the various mitigation techniques (*i.e.,* visual observations during day and night, compared to the PAM detections/operations).

Given the range of species that could occur in the Lease Area, the PAM system will consist of an array of hydrophones with both broadband (sampling mid-range frequencies of 2 kHz to 200 kHz) and at least one low-frequency hydrophone (sampling range frequencies of 75 Hz to 30 kHz). Monitoring of the PAM system will be conducted from a customized processing station aboard the HRG survey vessel. The on-board processing station provides the interface between the PAM system and the operator. The PAM operator(s) will monitor the hydrophone signals in real time both aurally (using headphones) and visually (via the monitor screen displays). Ocean Wind proposes the use of PAMGuard software for ''target motion analysis'' to support localization in relation to the identified exclusion zone. PAMGuard is an open source and versatile software/hardware interface to enable flexibility in the configuration of in-sea equipment (number of hydrophones, sensitivities, spacing, and geometry). PAM operators will immediately communicate detections/vocalizations to the Lead PSO on duty who will ensure the implementation of the appropriate mitigation measure (*e.g.,* shutdown) even if visual observations by PSOs have not been made.

Ramp-Up

As per the BOEM Lease, a ramp-up procedure will be used for HRG survey equipment capable of adjusting energy levels at the start or re-start of HRG survey activities. A ramp-up procedure will be used at the beginning of HRG survey activities in order to provide additional protection to marine mammals near the Lease Area by allowing them to vacate the area prior to the commencement of survey equipment use. The ramp-up procedure will not be initiated during daytime, night time, or periods of inclement weather if the exclusion zone cannot be adequately monitored by the PSOs using the appropriate visual technology (*e.g.,* reticulated binoculars, night vision equipment) and/or PAM for a 60-minute period. A ramp-up would begin with the power of the smallest acoustic HRG equipment at its lowest practical power output appropriate for the survey. The power would then be gradually turned up and other acoustic sources added such that the source level would increase in steps not exceeding 6 dB per 5-minute period. If marine mammals are detected within the HRG survey exclusion zone prior to or during the ramp-up, activities will be delayed until the animal(s) has moved outside the monitoring zone and no marine mammals are detected for a period of 60 minutes.

The DP vessel thrusters will be engaged to support the safe operation of the vessel and crew while conducting geotechnical survey activities and require use as necessary. Therefore, there is no opportunity to engage in a ramp-up procedure.

Shutdown and Powerdown

HRG Survey—The exclusion zone(s) around the noise-producing activities (HRG survey equipment) will be monitored, as previously described, by PSOs and at night by PAM operators for the presence of marine mammals before, during, and after any noise-producing activity. The vessel operator must comply immediately with any call for shutdown by the Lead PSO. Any disagreement should be discussed only after shutdown.

As per the BOEM Lease, if a non-delphinoid (*i.e.,* mysticetes and sperm whales) cetacean is detected at or within the established exclusion zone (200-m exclusion zone), an immediate shutdown of the HRG survey equipment is required. Subsequent restart of the electromechanical survey equipment must use the ramp-up procedures described above and may only occur following clearance of the exclusion zone for 60 minutes. These are extremely conservative shutdown zones, as the 200-m exclusion radii exceed the distances to the estimated Level B harassment isopleths (75.28 m.).

As per the BOEM Lease, if a delphinoid cetacean or pinniped is detected at or within the exclusion zone, the HRG survey equipment (including the sub-bottom profiler) must be powered down to the lowest power output that is technically feasible. Subsequent power up of the survey equipment must use the ramp-up procedures described above and may occur after (1) the exclusion zone is clear of a delphinoid cetacean and/or pinniped for 60 minutes or (2) a determination by the PSO after a minimum of 10 minutes of observation that the delphinoid cetacean or pinniped is approaching the vessel or towed equipment at a speed and vector that indicates voluntary approach to bow-ride or chase towed equipment.

If the HRG sound source (including the sub-bottom profiler) shuts down for reasons other than encroachment into the exclusion zone by a marine mammal including but not limited to a mechanical or electronic failure, resulting in in the cessation of sound source for a period greater than 20 minutes, a restart for the HRG survey equipment (including the sub-bottom profiler) is required using the full ramp-up procedures and clearance of the exclusion zone of all cetaceans and pinnipeds for 60 minutes. If the pause is less than 20 minutes, the equipment may be restarted as soon as practicable at its operational level as long as visual surveys were continued diligently throughout the silent period and the exclusion zone remained clear of cetaceans and pinnipeds. If the visual surveys were not continued diligently during the pause of 20 minutes or less, a restart of the HRG survey equipment (including the sub-bottom profiler) is required using the full ramp-up procedures and clearance of the exclusion zone for all cetaceans and pinnipeds for 60 minutes.

Geotechnical Survey (DP Thrusters)—During geotechnical survey activities, a constant position over the drill or CPT site must be maintained to ensure the integrity of the survey equipment. Any stoppage of DP thruster during the proposed geotechnical activities has the potential to result in significant damage to survey equipment. Therefore, during geotechnical survey activities, if marine mammals enter or approach the established exclusion and monitoring zone, Ocean Wind shall reduce DP thruster to the maximum extent possible, except under circumstances when reducing DP thruster use would compromise safety (both human health and environmental) and/or the integrity of the equipment. Reducing thruster energy will effectively reduce the potential for exposure of marine mammals to sound energy. After decreasing thruster energy, PSOs will continue to monitor marine mammal behavior and determine if the animal(s) is moving towards or away from the established monitoring zone. If the animal(s) continues to move towards the sound source then DP thruster use would remain at the reduced level. Normal use will resume when PSOs report that the marine mammals have moved away from and remained clear of the monitoring zone for a minimum of 60 minutes since the last sighting.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth, ''requirements pertaining to the monitoring and reporting of such taking.'' The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for incidental take authorizations (ITAs) must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring measures prescribed by NMFS should contribute to improved understanding of one or more of the following general goals:

- Occurrence of marine mammal species or stocks in the action area (*e.g.,* presence, abundance, distribution, density).
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life

history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas).

- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors.
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks.
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat).
- Mitigation and monitoring effectiveness.

Ocean Wind submitted marine mammal monitoring and reporting measures as part of the IHA application. These measures may be modified or supplemented based on comments or new information received from the public during the public comment period.

Visual Monitoring—Visual monitoring of the established Level B harassment zones (200-m radius during HRG surveys (note that this is the same as the mitigation exclusion/shutdown zones established for HRG survey sound sources); 500-m radius during DP thruster use (note that this is the same as the mitigation powerdown zone established for DP thruster sound sources)) will be performed by qualified and NMFS-approved PSOs (see discussion of PSO qualifications and requirements in *Marine Mammal Exclusion Zones* above).

The PSOs will begin observation of the monitoring zone during all HRG survey activities and all geotechnical operations where DP thrusters are employed. Observations of the monitoring zone will continue throughout the survey activity and/or while DP thrusters are in use. PSOs will be responsible for visually monitoring and identifying marine mammals approaching or entering the established monitoring zone during survey activities.

Observations will take place from the highest available vantage point on the survey vessel. General 360-degree scanning will occur during the monitoring periods, and target scanning by the PSO will occur when alerted of a marine mammal presence.

Data on all PSO observations will be recorded based on standard PSO collection requirements. This will include dates and locations of construction operations; time of observation, location and weather; details of the sightings (*e.g.,* species, age classification (if known), numbers, behavior); and details of any observed ''taking'' (behavioral disturbances or injury/mortality). The data sheet will be provided to both NMFS and BOEM for review and approval prior to the start of survey activities. In addition, prior to initiation of survey work, all crew members will undergo environmental training, a component of which will focus on the procedures for sighting and protection of marine mammals. A briefing will also be conducted between the survey supervisors and crews, the PSOs, and Ocean Wind. The purpose of the briefing will be to establish responsibilities of each party, define the chains of command, discuss communication procedures, provide an overview of monitoring purposes, and review operational procedures.

Acoustic Field Verification—As per the requirements of the BOEM Lease, field verification of the exclusion/monitoring zones will be conducted to determine whether the proposed zones correspond accurately to the relevant isopleths and are adequate to minimize impacts to marine mammals. The details of the field verification strategy will be provided in a Field Verification Plan no later than 45 days prior to the commencement of field verification activities.

Ocean Wind must conduct field verification of the exclusion zone (the 160 dB isopleth) for HRG survey equipment and the powerdown zone (the 120 dB isopleth) for DP thruster use for all equipment operating below 200 kHz. Ocean Wind must take acoustic measurements at a minimum of two reference locations and in a manner that is sufficient to establish source level (peak at 1 meter) and distance to the 160 dB isopleth (the Level B harassment zones for HRG surveys) and 120 dB isopleth (the Level B harassment zone) for DP thruster use. Sound measurements must be taken at the reference locations at two depths (*i.e.,* a depth at mid-water and a depth at approximately 1 meter (3.28 ft) above the seafloor).

Ocean Wind may use the results from its field-verification efforts to request modification of the exclusion/monitoring zones for the HRG or geotechnical surveys. Any new exclusion/monitoring zone radius proposed by Ocean Wind must be based on the most conservative measurements (*i.e.,* the largest safety zone configuration) of the target Level A or Level B harassment acoustic threshold zones. The modified zone must be used for all subsequent use of field-verified equipment. Ocean Wind must obtain approval from NMFS and BOEM of any new exclusion/monitoring zone before it may be implemented and the IHA shall be modified accordingly.

Proposed Reporting Measures

The Applicant will provide the following reports as necessary during survey activities:

- The Applicant will contact NMFS and BOEM within 24 hours of the commencement of survey activities and again within 24 hours of the completion of the activity.
- *As per the BOEM Lease:* Any observed significant behavioral reactions (*e.g.,* animals departing the area) or injury or mortality to any marine mammals must be reported to NMFS and BOEM within 24 hours of observation. Dead or injured protected species are reported to the NMFS Greater Atlantic Regional Fisheries Office (GARFO) Stranding Hotline (800–900–3622) within 24 hours of sighting, regardless of whether the injury is caused by a vessel. In addition, if the injury of death was caused by a collision with a project related vessel, Ocean Wind must ensure that NMFS and BOEM are notified of the strike within 24 hours. Additional reporting requirements for injured or dead animals are described below (*Notification of Injured or Dead Marine Mammals*).
- *Notification of Injured or Dead Marine Mammals*—In the unanticipated event that the specified HRG and geotechnical activities lead to an injury of a marine mammal (Level A harassment) or mortality (*e.g.,* ship-strike, gear interaction, and/or entanglement), Ocean Wind would immediately cease the specified activities and report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources and the NOAA GARFO Stranding Coordinator. The report would include the following information:
  - Time, date, and location (latitude/longitude) of the incident;
  - Name and type of vessel involved;
  - Vessel's speed during and leading up to the incident;
  - Description of the incident;
  - Status of all sound source use in the 24 hours preceding the incident;
  - Water depth;
  - Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, and visibility);
  - Description of all marine mammal observations in the 24 hours preceding the incident;

- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

Activities would not resume until NMFS is able to review the circumstances of the event. NMFS would work with Ocean Wind to minimize reoccurrence of such an event in the future. Ocean Wind would not resume activities until notified by NMFS.

In the event that Ocean Wind discovers an injured or dead marine mammal and determines that the cause of the injury or death is unknown and the death is relatively recent (*i.e.,* in less than a moderate state of decomposition), Ocean Wind would immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources and the GARFO Stranding Coordinator. The report would include the same information identified in the paragraph above. Activities would be able to continue while NMFS reviews the circumstances of the incident. NMFS would work with Ocean Wind to determine if modifications in the activities are appropriate.

In the event that Ocean Wind discovers an injured or dead marine mammal and determines that the injury or death is not associated with or related to the activities authorized in the IHA (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), Ocean Wind would report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the NMFS GARFO Regional Stranding Coordinator, within 24 hours of the discovery. Ocean Wind would provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS. Ocean Wind can continue its operations under such a case.

- Within 90 days after completion of the marine site characterization survey activities, a technical report will be provided to NMFS and BOEM that fully documents the methods and monitoring protocols, summarizes the data recorded during monitoring, estimates the number of marine mammals that may have been taken during survey activities, and provides an interpretation of the results and effectiveness of all monitoring tasks. Any recommendations made by NMFS must be addressed in the final report prior to acceptance by NMFS.
- In addition to the Applicant's reporting requirements outlined above, Ocean Wind will provide an assessment report of the effectiveness of the various mitigation techniques, *i.e.* visual observations during day and night, compared to the PAM detections/operations. This will be submitted as a draft to NMFS and BOEM 30 days after the completion of the HRG and geotechnical surveys and as a final version 60 days after completion of the surveys.

Negligible Impact Analysis and Determinations

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival. A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes, alone, is not enough information on which to base an impact determination. In addition to considering the authorized number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration, etc.), as well as effects on habitat, the status of the affected stocks, and the likely effectiveness of the mitigation. Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into these analyses via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

As discussed in the *Potential Effects* section, permanent threshold shift, masking, non-auditory physical effects, and vessel strike are not expected to occur. Further, once an area has been surveyed, it is not likely that it will be surveyed again, thereby reducing the likelihood of repeated impacts within the project area.

Potential impacts to marine mammal habitat were discussed previously in this document (see the *Potential Effects of the Specified Activity on Marine Mammals and their Habitat* section). Marine mammal habitat may be impacted by elevated sound levels and some sediment disturbance, but these impacts would be temporary. Feeding behavior is not likely to be significantly impacted, as marine mammals appear to be less likely to exhibit behavioral reactions or avoidance responses while engaged in feeding activities (Richardson *et al.,* 1995). Prey species are mobile and are broadly distributed throughout the Lease Area; therefore, marine mammals that may be temporarily displaced during survey activities are expected to be able to resume foraging once they have moved away from areas with disturbing levels of underwater noise. Because of the temporary nature of the disturbance, the availability of similar habitat and resources in the surrounding area, and the lack of important or unique marine mammal habitat, the impacts to marine mammals and the food sources that they utilize are not expected to cause significant or long-term consequences for individual marine mammals or their populations. Furthermore, there are no rookeries or mating grounds known to be biologically important to marine mammals within the proposed project area. A biologically important feeding area for North Atlantic right whale encompasses the Lease Area (LaBrecque *et al.,* 2015); however, there is no temporal overlap between the biologically important area (BIA) (effective March-April; November-December) and the proposed survey activities (May-June; October). There is one ESA-listed species for which takes are proposed for the fin whale. There are currently insufficient data to determine population trends for fin whale (Waring *et al.,* 2015); however, we are proposing to authorize a single take for this species, therefore, we do not expect population-level impacts. There is no designated critical habitat for any ESA-listed marine mammals within the Lease Area, and none of the stocks for non-listed species proposed to be taken are considered ''depleted'' or ''strategic'' by NMFS under the MMPA.

The proposed mitigation measures are expected to reduce the number and/or severity of takes by (1) giving animals the opportunity to move away from the sound source before HRG survey equipment reaches full energy and (2) reducing the intensity of exposure within a certain distance by reducing the DP thruster power. Additional vessel strike avoidance requirements will further mitigate potential impacts to marine mammals during vessel transit to and within the Study Area.

Ocean Wind did not request, and NMFS is not proposing, take of marine mammals by injury, serious injury, or mortality. NMFS expects that most takes would be in the form of short-term Level

B behavioral harassment in the form of brief startling reaction and/or temporary avoidance of the area or decreased foraging (if such activity were occurring)—reactions that are considered to be of low severity and with no lasting biological consequences (*e.g.,* Southall *et al.,* 2007). This is largely due to the short time scale of the proposed activities, the low source levels and intermittent nature of many of the technologies proposed to be used, as well as the required mitigation.

NMFS concludes that exposures to marine mammal species and stocks due to Ocean Wind's HRG and geotechnical survey activities would result in only short-term (temporary and short in duration) and relatively infrequent effects to individuals exposed and not of the type or severity that would be expected to be additive for the very small portion of the stocks and species likely to be exposed. Given the duration and intensity of the activities (including the mitigation) NMFS does not anticipate the proposed take estimates to impact annual rates of recruitment or survival. Animals may temporarily avoid the immediate area, but are not expected to permanently abandon the area. Major shifts in habitat use, distribution, or foraging success, are not expected.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under Section 101(a)(5)(D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, NMFS compares the number of individuals taken to the most appropriate estimation of the relevant species or stock size in our determination of whether an authorization is limited to small numbers of marine mammals.

TABLE 9—SUMMARY OF POTENTIAL MARINE MAMMAL TAKES AND PERCENTAGE OF STOCKS AFFECTED

Species	Requested take authorization (number)	Stock abundance estimate	Percentage of stock potentially affected
Fin Whale (*Balaenoptera physalus*)	5	1,618	0.31
Bottlenose Dolphin (*Tursiops truncatus*)	286	77,532	0.368
Short beaked common Dolphin (*Delphinus delphis*)	32	70,184	0.045
Harbor Porpoise (*Phocoena phocoena*)	*4	79,883	0.005
Harbor Seal [1] *(Phoca vitulina)*	1	75,834	0.001

*Modeled take of this species was increased to account for average group size.

The requested takes proposed to be authorized for the HRG and geotechnical surveys represent 0.31 percent of the WNA stock of fin whale, 0.045 percent of the WNA stock of short-beaked common dolphin, 0.368 percent of the Western north Atlantic, offshore stock of bottlenose dolphin, 0.005 percent of the Gulf of Maine/Bay of Fundy stock of harbor porpoise, and 0.001 percent of the WNA stock of harbor seal (Tables 9). These take estimates represent the percentage of each species or stock that could be taken by Level B behavioral harassment and are extremely small numbers (less than 1 percent) relative to the affected species or stock sizes.

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act

Issuance of an MMPA authorization requires compliance with the ESA. Within the project area, fin, humpback, and North Atlantic right whale are listed as endangered under the ESA. Under section 7 of the ESA, BOEM consulted with NMFS on commercial wind lease issuance and site assessment activities on the Atlantic Outer Continental Shelf in Massachusetts, Rhode Island, New York and New Jersey Wind Energy Areas. NOAA's GARFO issued a Biological Opinion concluding that these activities may adversely affect but are not likely to jeopardize the continued existence of fin whale, humpback whale, or North Atlantic right whale. The Biological Opinion can be found online at *http://www.nmfs.noaa.gov/pr/permits/incidental/energy_other.htm.* NMFS is also consulting internally on the issuance of an IHA under section 101(a)(5)(D) of the MMPA for this activity. Following issuance of the Ocean Wind's IHA, the Biological Opinion may be amended to include an incidental take exemption for these marine mammal species, as appropriate.

National Environmental Policy Act (NEPA)

NMFS is preparing an Environmental Assessment (EA) in accordance with the National Environmental Policy Act (NEPA) and will consider comments submitted in response to this notice as part of that process. The EA will be posted at *http://www.nmfs.noaa.gov/pr/permits/incidental/energy_other.htm* once it is finalized.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to Ocean Wind for conducting HRG survey activities and use of DP vessel thrusters during geotechnical survey activities from June 2017 through May 2018, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. This section contains a draft of the IHA itself. The wording contained in this section is proposed for inclusion in the IHA (if issued).

Ocean Wind, LLC (Ocean Wind) is hereby authorized under section 101(a)(5)(D) of the Marine Mammal Protection Act (16 U.S.C. 1371(a)(5)(D)) and 50 CFR 216.107, to harass marine

mammals incidental to high-resolution geophysical (HRG) and geotechnical survey investigations associated with marine site characterization activities off the coast of New Jersey in the area of the Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (OCS–A 0498) (the Lease Area).

1. This Authorization is valid from June 1, 2017 through May 31, 2018.

2. This Authorization is valid only for HRG and geotechnical survey investigations associated with marine site characterization activities, as described in the Incidental Harassment Authorization (IHA) application.

3. The holder of this authorization (Holder) is hereby authorized to take, by Level B harassment only, 32 short-beaked common dolphins (*Delphinus delphis*), 286 bottlenose dolphin (*Tursiops truncatus*), 4 harbor porpoise (*Phocoena phocoena*), 5 fin whale (*Balaenoptera physalus*), and 1 harbor seal (*Phoca vitulina*) incidental to HRG survey activities and dynamic positioning (DP) vessel thruster use during geotechnical activities.

4. The taking of any marine mammal in a manner prohibited under this IHA must be reported immediately to NMFS' Greater Atlantic Regional Fisheries Office (GARFO).

5. The Holder or designees must notify NMFS GARFO and Office of Protected Resources (OPR) at least 24 hours prior to the seasonal commencement of the specified activity.

6. The holder of this Authorization must notify the Chief of the Permits and Conservation Division, Office of Protected Resources, or her designee at least 24 hours prior to the start of survey activities (unless constrained by the date of issuance of this Authorization in which case notification shall be made as soon as possible) at 301–427–8401 or to *laura.mccue@noaa.gov.*

7. Mitigation Requirements

The Holder is required to abide by the following mitigation conditions listed in 7(a)–(f). Failure to comply with these conditions may result in the modification, suspension, or revocation of this IHA.

(a) *Marine Mammal Exclusion Zones:* Protected species observers (PSOs) shall monitor the following zones for the presence of marine mammals:

- A 200-m exclusion zone during HRG surveys is in operation.
- A 500-m monitoring zone during the use of DP thrusters during geotechnical survey.
- At all times, the vessel operator shall maintain a separation distance of 500 m from any sighted North Atlantic right whale as stipulated in the *Vessel Strike Avoidance* procedures described below.

Visual monitoring of the established exclusion zone(s) shall be performed by qualified and NMFS-approved protected species observers (PSOs). An observer team comprising a minimum of four NMFS-approved PSOs and two certified Passive Acoustic Monitoring (PAM) operators, operating in shifts, shall be stationed aboard either the survey vessel or a dedicated PSO-vessel. PSOs shall be equipped with binoculars and have the ability to estimate distances to marine mammals located in proximity to the vessel and/or exclusion zone using range finders. Reticulated binoculars will also be available to PSOs for use as appropriate based on conditions and visibility to support the siting and monitoring of marine species. Digital single-lens reflex camera equipment shall be used to record sightings and verify species identification. During night operations, PAM (see *Passive Acoustic Monitoring* requirements below) and night-vision equipment in combination with infrared video monitoring shall be used. The PSOs shall begin observation of the exclusion zone(s) at least 60 minutes prior to ramp-up of HRG survey equipment. Use of noise-producing equipment shall not begin until the exclusion zone is clear of all marine mammals for at least 60 minutes. If a marine mammal is seen approaching or entering the 200-m exclusion zones during the HRG survey, or the 500-m monitoring zone during DP thrusters use, the vessel operator shall adhere to the shutdown/powerdown procedures described below to minimize noise impacts on the animals.

(b) *Ramp-Up:* A ramp-up procedure shall be used for HRG survey equipment capable of adjusting energy levels at the start or re-start of HRG survey activities. The ramp-up procedure shall not be initiated during daytime, night time, or periods of inclement weather if the exclusion zone cannot be adequately monitored by the PSOs using the appropriate visual technology (*e.g.,* reticulated binoculars, night vision equipment) and/or PAM for a 60-minute period. A ramp-up shall begin with the power of the smallest acoustic HRG equipment at its lowest practical power output appropriate for the survey. The power shall then be gradually turned up and other acoustic sources added such that the source level would increase in steps not exceeding 6 dB per 5-minute period. If a marine mammal is sighted within the HRG survey exclusion zone prior to or during the ramp-up, activities shall be delayed until the animal(s) has moved outside the monitoring zone and no marine mammals are sighted for a period of 60 minutes.

(c) Shutdown and Powerdown

HRG Survey—The exclusion zone(s) around the noise-producing activities HRG survey equipment will be monitored, as previously described, by PSOs and at night by PAM operators for the presence of marine mammals before, during, and after any noise-producing activity. The vessel operator must comply immediately with any call for shutdown by the Lead PSO. If a non-delphinoid (*i.e.,* mysticetes and sperm whales) cetacean is detected at or within the established exclusion zone (200-m exclusion zone during HRG surveys), an immediate shutdown of the HRG survey equipment is required. Subsequent restart of the electromechanical survey equipment must use the ramp-up procedures described above and may only occur following clearance of the exclusion zone for 60 minutes. If a delphinoid cetacean or pinniped is detected at or within the exclusion zone, the HRG survey equipment must be powered down to the lowest power output that is technically feasible. Subsequent power up of the survey equipment must use the ramp-up procedures described above and may occur after (1) the exclusion zone is clear of a delphinoid cetacean and/or pinniped for 60 minutes or (2) a determination by the PSO after a minimum of 10 minutes of observation that the delphinoid cetacean or pinniped is approaching the vessel or towed equipment at a speed and vector that indicates voluntary approach to bow-ride or chase towed equipment. If the HRG sound source shuts down for reasons other than encroachment into the exclusion zone by a marine mammal including but not limited to a mechanical or electronic failure, resulting in in the cessation of sound source for a period greater than 20 minutes, a restart for the HRG survey equipment is required using the full ramp-up procedures and clearance of the exclusion zone of all cetaceans and pinnipeds for 60 minutes. If the pause is less than 20 minutes, the equipment may be restarted as soon as practicable at its operational level as long as visual surveys were continued diligently throughout the silent period and the exclusion zone remained clear of cetaceans and pinnipeds. If the visual surveys were not continued diligently during the pause of 20 minutes or less, a restart of the HRG survey equipment is required using the full ramp-up procedures and clearance of the

exclusion zone for all cetaceans and pinnipeds for 60 minutes.

Geotechnical Survey (DP Thrusters)—During geotechnical survey activities if marine mammals enter or approach the established 120 dB isopleth monitoring zone, the Holder shall reduce DP thruster to the maximum extent possible, except under circumstances when reducing DP thruster use would compromise safety (both human health and environmental) and/or the integrity of the equipment. After decreasing thruster energy, PSOs shall continue to monitor marine mammal behavior and determine if the animal(s) is moving towards or away from the established monitoring zone. If the animal(s) continues to move towards the sound source then DP thruster use shall remain at the reduced level. Normal use shall resume when PSOs report that the marine mammals have moved away from and remained clear of the monitoring zone for a minimum of 60 minutes since the last sighting.

(d) *Vessel Strike Avoidance:* The Holder shall ensure that vessel operators and crew maintain a vigilant watch for cetaceans and pinnipeds and slow down or stop their vessels to avoid striking these protected species. Survey vessel crew members responsible for navigation duties shall receive site-specific training on marine mammal sighting/reporting and vessel strike avoidance measures. Vessel strike avoidance measures shall include the following, except under extraordinary circumstances when complying with these requirements would put the safety of the vessel or crew at risk:

- All vessel operators shall comply with 10 knot (<18.5 km per hour (km/h)) speed restrictions in any Dynamic Management Area (DMA). In addition, all vessels operating from November 1 through July 31 shall operate at speeds of 10 knots (<18.5 km/h) or less.
- All survey vessels shall maintain a separation distance of 500 m or greater from any sighted North Atlantic right whale.
- If underway, vessels must steer a course away from any sited North Atlantic right whale at 10 knots (<18.5 km/h) or less until the 500 m minimum separation distance has been established. If a North Atlantic right whale is sited in a vessel's path, or within 100 m to an underway vessel, the underway vessel must reduce speed and shift the engine to neutral. Engines shall not be engaged until the North Atlantic right whale has moved outside of the vessel's path and beyond 100 m. If stationary, the vessel must not engage engines until the North Atlantic right whale has moved beyond 100 m.
- All vessels shall maintain a separation distance of 100 m or greater from any sighted non-delphinoid (*i.e.,* mysticetes and sperm whales) cetacean. If sighted, the vessel underway must reduce speed and shift the engine to neutral, and must not engage the engines until the non-delphinoid cetacean has moved outside of the vessel's path and beyond 100 m. If a survey vessel is stationary, the vessel shall not engage engines until the non-delphinoid cetacean has moved out of the vessel's path and beyond 100 m.
- All vessels shall maintain a separation distance of 50 m or greater from any sighted delphinoid cetacean. Any vessel underway shall remain parallel to a sighted delphinoid cetacean's course whenever possible, and avoid excessive speed or abrupt changes in direction. Any vessel underway shall reduce vessel speed to 10 knots or less when pods (including mother/calf pairs) or large assemblages of delphinoid cetaceans are observed. Vessels may not adjust course and speed until the delphinoid cetaceans have moved beyond 50 m and/or abeam of the underway vessel.
- All vessels shall maintain a separation distance of 50 m (164 ft) or greater from any sighted pinniped.

(e) *Seasonal Operating Requirements:* Between watch shifts members of the monitoring team shall consult the NMFS North Atlantic right whale reporting systems for the presence of North Atlantic right whales throughout survey operations. The proposed survey activities shall occur outside of the seasonal management area (SMA) located off the coast of New Jersey and Delaware and outside of the seasonal mandatory speed restriction period for this SMA (November 1 through April 30). Throughout all survey operations, the Holder shall monitor the NMFS North Atlantic right whale reporting systems for the establishment of a DMA. If NMFS should establish a DMA in the Lease Area under survey, within 24 hours of the establishment of the DMA the Holder shall work with NMFS to shut down and/or alter the survey activities to avoid the DMA.

(f) *Passive Acoustic Monitoring:* To support 24-hour survey operations, the Holder shall include PAM as part of the project monitoring during the geophysical survey during nighttime operations, or as needed during periods when visual observations may be impaired. In addition, PAM systems shall be employed during daylight hours to support system calibration and PSO and PAM team coordination, as well as in support of efforts to evaluate the effectiveness of the various mitigation techniques (*i.e.,* visual observations during day and night, compared to the PAM detections/operations).

The PAM system shall consist of an array of hydrophones with both broadband (sampling mid-range frequencies of 2 kHz to 200 kHz) and at least one low-frequency hydrophone (sampling range frequencies of 75 Hz to 30 kHz). The PAM operator(s) shall monitor the hydrophone signals in real time both aurally (using headphones) and visually (via the monitor screen displays). PAM operators shall communicate detections/vocalizations to the Lead PSO on duty who shall ensure the implementation of the appropriate mitigation measure.

8. Monitoring Requirements

The Holder is required to abide by the following monitoring conditions listed in 8(a)–(b). Failure to comply with these conditions may result in the modification, suspension, or revocation of this IHA.

(a) *Visual Monitoring*—Protected species observers (refer to the PSO qualifications and requirements for *Marine Mammal Exclusion Zones* above) shall visually monitor the established Level B harassment zones (200-m radius during HRG surveys; 500-m radius during DP thruster use). The observers shall be stationed on the highest available vantage point on the associated operating platform. PSOs shall estimate distance to marine mammals visually, using laser range finders or by using reticulated binoculars during daylight hours. During night operations, PSOs shall use night-vision binoculars and infrared technology. Data on all PSO observations will be recorded based on standard PSO collection requirements. This will include dates and locations of survey operations; time of observation, location and weather; details of the sightings (*e.g.,* species, age classification (if known), numbers, behavior); and details of any observed ''taking'' (behavioral disturbances or injury/mortality). In addition, prior to initiation of survey work, all crew members will undergo environmental training, a component of which will focus on the procedures for sighting and protection of marine mammals

(b) *Acoustic Field Verification*—Field verification of the exclusion/monitoring zones shall be conducted to determine whether the proposed zones correspond accurately to the relevant isopleths and are adequate to minimize impacts to marine mammals. The Holder shall conduct field verification of the exclusion/monitoring zone (the 160 dB isolpleth) for HRG survey equipment

and the monitoring/powerdown zone (the 120 dB isopleth) for DP thruster use for all equipment operating below 200 kHz. The Holder shall take acoustic measurements at a minimum of two reference locations and in a manner that is sufficient to establish source level (peak at 1 meter) and distance to the 160 dB isopleth (the Level B harassment zones for HRG surveys) and 120 dB isopleth (the Level B harassment zone) for DP thruster use. Sound measurements shall be taken at the reference locations at two depths (*i.e.,* a depth at mid-water and a depth at approximately 1 meter (3.28 ft) above the seafloor). The Holder may use the results from its field-verification efforts to request modification of the exclusion/monitoring zones for the HRG or geotechnical surveys. Any new exclusion/monitoring zone radius proposed by the Holder shall be based on the most conservative measurements (*i.e.,* the largest safety zone configuration) of the target Level A or Level B harassment acoustic threshold zones. The modified zone shall be used for all subsequent use of field-verified equipment. The Holder shall obtain approval from NMFS and BOEM of any new exclusion/monitoring zone before it may be implemented and the IHA shall be modified accordingly.

9. Reporting Requirements

The Holder shall provide the following reports as necessary during survey activities:

(a) The Holder shall contact NMFS (301–427–8401) and BOEM (703–787–1300) within 24 hours of the commencement of survey activities and again within 24 hours of the completion of the activity.

(b) Any observed significant behavioral reactions (*e.g.,* animals departing the area) or injury or mortality to any marine mammals shall be reported to NMFS and BOEM within 24 hours of observation. Dead or injured protected species shall be reported to the NMFS GARFO Stranding Hotline (800–900–3622) within 24 hours of sighting, regardless of whether the injury is caused by a vessel. In addition, if the injury of death was caused by a collision with a project related vessel, the Holder shall ensure that NMFS and BOEM are notified of the strike within 24 hours. The Holder shall use the form included as Appendix A to Addendum C of the Lease to report the sighting or incident. If the Holder is responsible for the injury or death, the vessel must assist with any salvage effort as requested by NMFS.

Additional reporting requirements for injured or dead animals are described below (*Notification of Injured or Dead Marine Mammals*).

(c) Notification of Injured or Dead Marine Mammals

(i) In the unanticipated event that the specified HRG and geotechnical survey activities lead to an injury of a marine mammal (Level A harassment) or mortality (*e.g.,* ship-strike, gear interaction, and/or entanglement), the Holder shall immediately cease the specified activities and report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, 301–427–8401, and the NOAA GARFO Stranding Coordinator, 978–281–9300. The report shall include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Name and type of vessel involved;
- Vessel's speed during and leading up to the incident;
- Description of the incident;
- Status of all sound source use in the 24 hours preceding the incident;
- Water depth;
- Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- Description of all marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

Activities shall not resume until NMFS is able to review the circumstances of the event. NMFS would work with the Holder to minimize reoccurrence of such an event in the future. The Holder shall not resume activities until notified by NMFS.

(ii) In the event that the Holder discovers an injured or dead marine mammal and determines that the cause of the injury or death is unknown and the death is relatively recent (*i.e.,* in less than a moderate state of decomposition), the Holder shall immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, 301–427–8401, and the GARFO Stranding Coordinator, 978–281–9300. The report shall include the same information identified in the paragraph above. Activities would be able to continue while NMFS reviews the circumstances of the incident. NMFS would work with the Holder to determine if modifications in the activities are appropriate.

(iii) In the event that the Holder discovers an injured or dead marine mammal and determines that the injury or death is not associated with or related to the activities authorized in the IHA (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), the Holder shall report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, 301–427–8401, and the NMFS GARFO Regional Stranding Coordinator, 978–281–9300, within 24 hours of the discovery. The Holder shall provide photographs or video footage (if available) or other documentation of the stranded animal sighting.

(d) Within 90 days after completion of the marine site characterization survey activities, a technical report shall be provided to NMFS and BOEM that fully documents the methods and monitoring protocols, summarizes the data recorded during monitoring, estimates the number of marine mammals that may have been taken during survey activities, and provides an interpretation of the results and effectiveness of all monitoring tasks. Any recommendations made by NMFS shall be addressed in the final report prior to acceptance by NMFS.

(e) In addition to the Holder's reporting requirements outlined above, the Holder shall provide an assessment report of the effectiveness of the various mitigation techniques, *i.e.* visual observations during day and night, compared to the PAM detections/operations. This shall be submitted as a draft to NMFS and BOEM 30 days after the completion of the HRG and geotechnical surveys and as a final version 60 days after completion of the surveys.

10. This Authorization may be modified, suspended, or withdrawn if the Holder fails to abide by the conditions prescribed herein or if NMFS determines the authorized taking is having more than a negligible impact on the species or stock of affected marine mammals.

11. A copy of this Authorization and the Incidental Take Statement must be in the possession of each vessel operator taking marine mammals under the authority of this Incidental Harassment Authorization.

12. The Holder is required to comply with the Terms and Conditions of the Incidental Take Statement corresponding to NMFS' Biological Opinion.

Request for Public Comments

We request comment on our analyses, the draft authorization, and any other aspect of this Notice of Proposed IHA for the proposed HRG and geotechnical

survey investigation. Please include with your comments any supporting data or literature citations to help inform our final decision on the request for MMPA authorization.

Dated: April 27, 2017.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2017–08918 Filed 4–28–17; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Sanctuary System Business Advisory Council: Public Meeting

AGENCY: Office of National Marine Sanctuaries, National Ocean Service, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: Notice is hereby given of a Sanctuary System Business Advisory Council (council) meeting. The meeting is open to the public and will be conducted as a web-based conference call, where participants may provide comments at the appropriate time during the meeting. Participants can choose to access the meeting's audio via telephone, or both the meeting's audio and web-based visual components on a computer.

DATES: The meeting will be held Thursday, May 18, 2017 from 3:00 to 5:00 p.m. ET, and an opportunity for public comment will be provided at approximately 4:30 p.m. ET. Members of the public that wish to participate in the meeting must register in advance before or by Wednesday, May 17, 2017. Both times and agenda topics are subject to change.

ADDRESSES: The meeting will be held via web conference call. In order to register for the meeting before or by Wednesday, May 17, 2017, contact Kate Spidalieri at *Kate.Spidalieri@noaa.gov* or 240–533–0679. Webinar and teleconference capacity may be limited.

FOR FURTHER INFORMATION CONTACT: Kate Spidalieri, Office of National Marine Sanctuaries, 1305 East-West Highway, Silver Spring, Maryland 20910 (Email: *Kate.Spidalieri@noaa.gov;* Phone: 240–533–0679; Fax: 301–713–0404).

SUPPLEMENTARY INFORMATION: ONMS serves as the trustee for a network of underwater parks encompassing more than 600,000 square miles of marine and Great Lakes waters from Washington state to the Florida Keys, and from Lake Huron to American Samoa. The network includes a system of 13 national marine sanctuaries and Papahānaumokuākea and Rose Atoll marine national monuments. National marine sanctuaries protect our nation's most vital coastal and marine natural and cultural resources, and through active research, management, and public engagement, sustain healthy environments that are the foundation for thriving communities and stable economies. One of the many ways ONMS ensures public participation in the designation and management of national marine sanctuaries is through the formation of advisory councils. The Sanctuary System Business Advisory Council (council) has been formed to provide advice and recommendations to the Director regarding the relationship of ONMS with the business community. Additional information on the council can be found at *http://sanctuaries.noaa.gov/management/ac/welcome.html.*

Matters to be Considered: The meeting will provide an opportunity for council members to hear news from across the National Marine Sanctuary System and review and comment on program initiatives. For a complete agenda, including times and topics, please visit *http://sanctuaries.noaa.gov/management/bac/meetings.html.*

Authority: 16 U.S.C. Sections 1431, *et seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: April 24, 2017.

John Armor,

Director, Office of National Marine Sanctuaries, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2017–08921 Filed 5–2–17; 8:45 am]

BILLING CODE 3510–NK–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Global Intellectual Property Academy (GIPA) Surveys

ACTION: Proposed collection; comment request.

SUMMARY: The United States Patent and Trademark Office (USPTO), as required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), invites comments on a proposed extension of an existing information collection.

DATES: Written comments must be submitted on or before July 3, 2017.

ADDRESSES: You may submit any comments by any of the following methods:

- *Email: Information Collection@uspto.gov.* Include ''0651–0065 comment'' in the subject line of the message.
- *Mail*: Marcie Lovett, Records and Information Governance Division Director, Office of the Chief Technology Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.
- *Federal Rulemaking Portal: http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to J. David Binsted, Program Manager, Global Intellectual Property Academy, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450; by telephone at 571–272–1500; or by email at *james.binsted@upsto.gov.* Additional information about this collection is also available at *http://www.reginfor.gov* under ''Information Collection Review.''

SUPPLEMENTARY INFORMATION:

I. Abstract

The United States Patent and Trademark Office (USPTO) surveys international and domestic participants of the USPTO's Global Intellectual Property Academy (GIPA) training programs to obtain feedback from the participants on the effectiveness of the various services provided to them in the training programs. GIPA was established in 2006 to offer training programs on the enforcement of intellectual property rights, patents, trademarks, and copyright. The training programs offered by GIPA are designed to meet the specific needs of foreign government officials (including judges; prosecutors; police; customs officials; patent, trademark, and copyright officials; and policy makers) concerning various intellectual property topics, such as global intellectual property rights protection, enforcement, and strategies to handle the protection and enforcement issues in their respective countries.

This collection contains three surveys directed to separate audiences: Pre-program, post-program, and alumni. The pre-program survey is designed to obtain the background and experience of a participant and is delivered to the participant prior to their arrival for a GIPA training program. The post-program survey is used to analyze the overall effectiveness of the program and is conducted at the conclusion of the training program. The alumni survey is used to determine the value of the GIPA

training program on the future job performance of the participant. The data obtained from these participation satisfaction surveys will be used to evaluate the percentage of foreign officials trained by GIPA who have increased their expertise in intellectual property, the satisfaction with the intellectual property program, and the value of the experience as it relates to future job performance. The data received from these surveys will also be used to help the USPTO meet organizational performance and accountability goals through the following legislative mandates: Government Performance and Results Act of 1993 (GPRA), the President's Management Agenda (PMA), and the Office of OMB's (OMB's) Program Assessment Rating Tool (PART). These surveys also support various business goals developed by the USPTO to fulfill customer service and performance goals, to assist the USPTO in strategic planning for future initiatives, to very existing service standards, and to establish new ones.

The GIPA surveys are voluntary surveys. The USPTO expects to hire a survey contractor to conduct these surveys. The surveys will primarily be conducted electronically, but the USPTO will also have paper surveys to mail to those participants who have poor Internet connectivity or have access restrictions. In-person surveys may also be conducted. Survey participants will be able to access the online surveys through links provided to them in email invitations. The links provided in these emails are individualized links that are uniquely tied to the survey participants so passwords, user IDs, or usernames are not needed to access the surveys.

Information collected from the surveys will be kept private, to the extent provided by law. Responses to the pre-program, post-program, and alumni surveys can be linked to the participants and to the demographic data collected from them during the various GIPA training programs. However, the actual data recorded from the surveys will not be directly linked to the participants. Any data linking the individual to their responses will not be retained after the data has been aggregated. The USPTO will have limited access to the data. The only data that the USPTO can access will be the aggregated survey data and the frequency of the responses. The agency will not be able to view the individual responses or the data related to the survey. The survey contractor will have access to individual survey responses for analysis purposes only and will only report the aggregated data and the frequency of the responses. The USPTO does not intend to collect any personally identifying data from the participants and intends to maintain the contact information for the participants in a separate file for the quantitative data.

II. Method of Collection

The surveys will primarily be online surveys but the USPTO will also have paper surveys to mail to those participants who have poor Internet connectivity or have access restrictions. The surveys will also be distributed by email. In-person surveys may also be conducted.

III. Data

OMB Number: 0651–0065.

Form Number(s): None.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households and business or other for-profit institutions.

Estimated Number of Respondents: 450 responses per year. The USPTO estimates that approximately 100% of the surveys will be filed electronically.

Estimated Time per Response: The USPTO estimates that it takes the public approximately 15 minutes (0.25 hours) to complete the surveys in this collection. This includes the time to gather the necessary information, respond to the survey, and submit it to the USPTO.

Estimated Total Annual Respondent Burden Hours: 112.50 hours per year.

Estimated Total Annual Respondent Cost Burden: $20,475.00 per year. The USPTO expects that the audience for the GIPA training programs will typically consist of high-ranking government officials, judges, lawyers, examiners, and others. The USPTO estimates that roughly 20% of the attendees fall into the high-ranking categories, while the rest make up 80% of the attendees. The USPTO estimates the hourly rate of $410 for high-ranking attendees, while the rest would be roughly equivalent to the para-professional hourly rate of $125. Using a 20/80 weighted average for the attendee categories, the blended rate for attendees is $182. Since individuals with varying job titles and pay grades typically attend the GIPA training programs, the USPTO is currently unable to derive a concise international labor rate for these individuals. Additionally, since the training is conducted in the United States, the USPTO is using the corresponding United States pay rate to calculate the hourly labor rates. If the agency can obtain more concise hourly labor rate data for these individuals, these rates will be used to calculate the respondent burden in the future. The USPTO estimates that the total respondent cost burden for this collection is $20,475.00 per year.

TABLE 1—TOTAL HOURLY BURDEN

IC No.	Item	Estimated time for response (hours) (a)	Estimated annual responses (b)	Estimated Annual Burden Hours (a) x (b) = (c)	Rate ($/hr) (d)	Estimated annual burden (c) x (d) = (e)
1	Pre-Program Survey	0.25	150	37.50	$182.00	$6,825.00
2	Post-Program Survey	0.25	150	37.50	182.00	6,825.00
3	Alumni Survey	0.25	150	37.50	182.00	6,825.00
Totals			450	112.50		20,475.00

Estimated Total Annual Non-hour Respondent Cost Burden: $0.00 per year. There are no maintenance, operation, capital start-up, or recordkeeping costs associated with this information collection. These surveys do not have filing or other fees associated with them. The USPTO expects to conduct these surveys electronically using a survey tool and may also conduct in-person surveys. In either case, there will be no postage costs associated with these surveys.

IV. Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

The USPTO is soliciting public comments to:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected; and

(d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Dated: April 14, 2017.

Marcie Lovett,

Records and Information Governance Division Director, USPTO, Office of the Chief Technology Officer.

[FR Doc. 2017–08897 Filed 5–2–17; 8:45 am]

BILLING CODE 3510–16–P

COMMISSION OF FINE ARTS

Notice of Meeting

The next meeting of the U.S. Commission of Fine Arts is scheduled for 18 May 2017, at 9:00 a.m. in the Commission offices at the National Building Museum, Suite 312, Judiciary Square, 401 F Street NW., Washington DC, 20001–2728. Items of discussion may include buildings, parks and memorials.

Draft agendas and additional information regarding the Commission are available on our Web site: *www.cfa.gov.* Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Thomas Luebke, Secretary, U.S. Commission of Fine Arts, at the above address; by emailing *cfastaff@cfa.gov;* or by calling 202–504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated 24 April 2017 in Washington, DC.

Thomas Luebke,

Secretary.

[FR Doc. 2017–08781 Filed 5–2–17; 8:45 am]

BILLING CODE 6330–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 82 FR 19665, April 28, 2017.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 11:00 a.m., Thursday, May 4, 2017.

CHANGES IN THE MEETING: The meeting has been cancelled.

CONTACT PERSON FOR MORE INFORMATION: Christopher Kirkpatrick, 202–418–5964.

Christopher J. Kirkpatrick,

Secretary of the Commission.

[FR Doc. 2017–08974 Filed 5–1–17; 11:15 am]

BILLING CODE 6351–01–P

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC–2010–0046]

Agency Information Collection Activities; Proposed Collection; Comment Request; Consumer Focus Groups

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995, the Consumer Product Safety Commission (CPSC or Commission) requests comments on a proposed extension of approval of a collection of information from persons who may voluntarily participate in consumer focus groups. The Office of Management and Budget (OMB) previously approved the collection of information under control number 3041–0136. OMB's most recent extension of approval will expire on August 31, 2017. The Commission will consider all comments received in response to this notice before requesting an extension of this collection of information from the Office of Management and Budget (OMB).

DATES: Submit written or electronic comments on the collection of information by July 3, 2017.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2010–0046, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: *http://www.regulations.gov.* Follow the instructions for submitting comments. The Commission does not accept comments submitted by electronic mail (email), except through *www.regulations.gov.* The Commission encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

Written Submissions: Submit written submissions in the following way: Mail/hand delivery/courier to: Office of the Secretary, Consumer Product Safety Commission, Room 820, 4330 East-West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to: *http://www.regulations.gov.* Do not submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If furnished at all, such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to: *http://www.regulations.gov,* and insert the docket number, CPSC–2010–0046, into the ''Search'' box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Charu S. Krishnan, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814; (301) 504–7221, or by email to: *ckrishnan@cpsc.gov.*

SUPPLEMENTARY INFORMATION: CPSC seeks to renew the following currently approved collection of information:

Title: Consumer Focus Groups.

OMB Number: 3041–0136.

Type of Review: Renewal of collection.

Frequency of Response: On occasion.

Affected Public: Consumers.

Estimated Number of Respondents: 650 participants.

Estimated Time per Response: 3 hours.

Total Estimated Annual Burden: 1,950 hours (650 participants × 3 hours).

General Description of Collection: Section 5(a) of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2054(a), authorizes the Commission to conduct studies and investigations relating to the causes and prevention of deaths,

accidents, injuries, illnesses, other health impairments, and economic losses associated with consumer products. Section 5(b) of the CPSA, 15 U.S.C. 2054(b), further provides that the Commission may conduct research, studies and investigations on the safety of consumer products or test consumer products and develop product safety test methods and testing devices.

To help identify and evaluate product-related incidents, Commission staff invites and obtains direct feedback from consumers on issues related to product safety, such as recall effectiveness, product use, and perceptions regarding safety issues. The information that the CPSC collects from future focus groups will help inform the Commission's identification and evaluation of consumer products and product use, by providing insight and information into consumer perceptions and usage patterns. In some cases, one-on-one interviews may be conducted as a more in-depth extension of a focus group or in place of a traditional focus group. This information may also assist the Commission in its efforts to support voluntary standards activities and help CPSC identify consumer safety issues requiring additional research. In addition, based on the information obtained, CPSC may be able to provide safety information to the public that is easier to read and understood by a wider range of consumers.

B. Request for Comments

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information relevant to the following topics:

- Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;
- Whether the estimated burden of the proposed collection of information is accurate;
- Whether the quality, utility, and clarity of the information to be collected could be enhanced; and
- Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Alberta E. Mills,

Acting Secretary, Consumer Product Safety Commission.

[FR Doc. 2017–08914 Filed 5–2–17; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC–2010–0054]

Agency Information Collection Activities; Proposed Extension of Approval of Information Collection; Comment Request—Procedures for Export of Noncomplying Products

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995, the Consumer Product Safety Commission (CPSC or Commission) requests comments on a proposed extension of approval of a collection of information relating to the procedures for the export of noncomplying products. The Office of Management and Budget (OMB) previously approved the collection of information under control number 3041–0003. OMB's most recent extension of approval will expire on August 31, 2017. The Commission will consider all comments received in response to this notice before requesting an extension of approval of this collection of information from OMB.

DATES: The Office of the Secretary must receive comments not later than July 3, 2017.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2010–0054, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: *http://www.regulations.gov.* Follow the instructions for submitting comments. The Commission does not accept comments submitted by electronic mail (email), except through *www.regulations.gov.* The Commission encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

Written Submissions: Submit written submissions by mail/hand delivery/courier to: Office of the Secretary, Consumer Product Safety Commission, Room 820, 4330 East-West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to: *http://www.regulations.gov.* Do not submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If furnished at all, such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to: *http://www.regulations.gov,* and insert the docket number CPSC–2010–0054, into the ''Search'' box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Charu S. Krishnan, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814; (301) 504–7221, or by email to: *ckrishnan@cpsc.gov.*

SUPPLEMENTARY INFORMATION: CPSC seeks to renew the following currently approved collection of information:

Title: Procedures for the Export of Noncomplying Products.

OMB Number: 3041–0003.

Type of Review: Renewal of collection.

Frequency of Response: On occasion.

Affected Public: Exporters of products that do not comply with Commission requirements.

Estimated Number of Respondents: 5 exporters will file approximately 9 notifications.

Estimated Time per Response: 1 hour per notification.

Total Estimated Annual Burden: 45 hours (5 exporters × 9 notifications × 1 hour).

General Description of Collection: The Commission has procedures that exporters must follow to notify the Commission of the exporter's intent to export products that are banned or fail to comply with an applicable CPSC safety standard, regulation, or statute. Respondents must comply with the requirements in 16 CFR part 1019 and file a statement with the Commission in accordance with these requirements.

B. Request for Comments

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information relevant to the following topics:

- Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;
- Whether the estimated burden of the proposed collection of information is accurate;
- Whether the quality, utility, and clarity of the information to be collected could be enhanced; and

• Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Alberta E. Mills,

Acting Secretary, Consumer Product Safety Commission.

[FR Doc. 2017–08913 Filed 5–2–17; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC–2010–0053]

Agency Information Collection Activities; Proposed Extension of Approval of Information Collection; Comment Request—Safety Standard for Multi-Purpose Lighters

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995, the Consumer Product Safety Commission (CPSC or Commission) requests comments on a proposed extension of approval of a collection of information associated with the collection of information for the Safety Standard for Multi-Purpose Lighters, 16 CFR part 1212. The Office of Management and Budget (OMB) previously approved the collection of information under control number 3041–0130. OMB's most recent extension of approval will expire on August 31, 2017. The Commission will consider all comments received in response to this notice before requesting an extension of approval of this collection of information from OMB.

DATES: The Office of the Secretary must receive comments not later than July 3, 2017.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2010–0053, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: *http://www.regulations.gov.* Follow the instructions for submitting comments. The Commission does not accept comments submitted by electronic mail (email), except through *www.regulations.gov.* The Commission encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

Written Submissions: Submit written submissions by mail/hand delivery/courier to: Office of the Secretary, Consumer Product Safety Commission, Room 820, 4330 East-West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to: *http://www.regulations.gov.* Do not submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If furnished at all, such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to: *http://www.regulations.gov,* and insert the docket number CPSC–2010–0053, into the ''Search'' box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Charu S. Krishnan, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814; (301) 504–7221, or by email to: *ckrishnan@cpsc.gov.*

SUPPLEMENTARY INFORMATION: CPSC seeks to renew the following currently approved collection of information:

Title: Safety Standard for Multi-Purpose Lighters.

OMB Number: 3041–0130.

Type of Review: Renewal of collection.

Frequency of Response: On occasion.

Affected Public: Manufacturers and importers of multi-purpose lighters.

Estimated Number of Respondents: 61 firms will test on average 2 models per firm

Estimated Time per Response: 50 hours/model.

Total Estimated Annual Burden: 6,100 hours (61 firms × 2 models × 50 hours).

General Description of Collection: The Commission issued a safety standard for multi-purpose lighters (16 CFR part 1212) in 1999. The standard includes requirements that manufacturers (including importers) of multi-purpose lighters issue certificates of compliance based on a reasonable testing program. The standard also requires that manufacturers and importers maintain certain records. Respondents must comply with these testing, certification, and recordkeeping requirements for multi-purpose lighters.

B. Request for Comments

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information relevant to the following topics:

• Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;

• Whether the estimated burden of the proposed collection of information is accurate;

• Whether the quality, utility, and clarity of the information to be collected could be enhanced; and

• Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Alberta E. Mills,

Acting Secretary, Consumer Product Safety Commission.

[FR Doc. 2017–08916 Filed 5–2–17; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. 2011–0014]

Agency Information Collection Activities: Proposed Collection; Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: Consumer Product Safety Commission.

ACTION: Notice and request for comments.

SUMMARY: As required by the Paperwork Reduction Act of 1995, the Consumer Product Safety Commission (CPSC or Commission) requests comments on a proposed extension of approval of a generic clearance for the collection of qualitative feedback on agency service delivery. The Office of Management and Budget (OMB) previously approved the collection of information under control number 3041–0148. OMB's most recent extension of approval will expire on August 31, 2017. The Commission will consider all comments received in response to this notice before requesting an extension of approval of this collection of information from OMB.

DATES: The Office of the Secretary must receive comments not later than July 3, 2017.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2011–0014, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: *http://www.regulations.gov.* Follow the instructions for submitting comments. The Commission does not accept comments submitted by electronic mail (email), except through *www.regulations.gov.* The Commission encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

Written Submissions: Submit written submissions by mail/hand delivery/courier to: Office of the Secretary, Consumer Product Safety Commission, Room 820, 4330 East-West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to: *http://www.regulations.gov.* Do not submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If furnished at all, such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to: *http://www.regulations.gov,* and insert the Docket No. 2011–0014, into the ''Search'' box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Charu S. Krishnan, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814; (301) 504–7221, or by email to: *ckrishnan@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

A. Burden Hours

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

Abstract: The information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner to improve service delivery. Below we provide the CPSC's projected average estimates of qualitative surveys, focus groups, customer satisfaction surveys, and usability tests for the next 3 years.

Current Actions: Renewal of collection of information.

Type of Review: Renewal.

Affected Public: Individuals and households, businesses and organizations, state, local, or tribal government.

Average Expected Annual Number of Activities: Eight activities, including qualitative surveys, focus groups, customer satisfaction surveys, and usability tests.

Annual Number of Respondents: 1,600.

Annual Responses: 1,600.

Frequency of Response: Once per request.

Average Minutes per Response: 45 minutes per response.

Annual Burden Hours: 1,200.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection of information displays a currently valid OMB control number.

General Description of Collection: The CPSC will collect, analyze, and interpret information gathered through this generic clearance to identify strengths and weaknesses of current services and make improvements in service delivery based on feedback. The solicitation of feedback will target areas such as: Timeliness, appropriateness, accuracy of information, courtesy, efficiency of service delivery, and resolution of issues with service delivery. Responses will be assessed to plan and inform efforts to improve or maintain the quality of service offered to the public.

B. Request for Comments

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information relevant to the following topics:

- Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;
- Whether the estimated burden of the proposed collection of information is accurate;
- Whether the quality, utility, and clarity of the information to be collected could be enhanced; and
- Whether the burden imposed by the collection of information could be minimized by use of automated, electronic, or other forms of information technology.

Alberta E. Mills,

Acting Secretary, Consumer Product Safety Commission.

[FR Doc. 2017–08915 Filed 5–2–17; 8:45 am]

BILLING CODE 6355–01–P

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

Agency Information Collection Activities: Proposed Collection; Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: Court Services and Offender Supervision Agency for the District of Columbia (CSOSA).

ACTION: Notice and request for comments.

SUMMARY: As part of a federal government-wide effort to streamline the process to seek feedback from the public on service delivery, CSOSA is seeking comment on the development of the following proposed Generic Information Collection Request (Generic ICR): ''Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery '' for approval under the Paperwork Reduction Act (PRA). This notice announces our intent to submit this collection to OMB for approval and solicit comments on specific aspects for the proposed information collection.

DATES: Consideration will be given to all comments received by July 3, 2017.

ADDRESSES: You may submit written comments, identified by ''Collection of Qualitative Feedback on Agency Service Delivery'' to: Rochelle Durant, Program Analyst, Office of General Counsel, Court Services and Offender Supervision Agency for the District of Columbia, 633 Indiana Avenue NW., Washington, DC 20004 or to *Rochelle.Durant@csosa.gov. Fax:* (202) 220–5315.

Comments submitted in response to this notice may be made available to the public. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email comment, your email address will be automatically captured and included as part of the comment that is placed in the public docket and may be made available on the Internet. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comments that may be made available to the public notwithstanding the inclusion of the routine notice.

FOR FURTHER INFORMATION CONTACT: Rochelle Durant, Program Analyst, Office of General Counsel, Court Services and Offender Supervision Agency for the District of Columbia, 633

Indiana Avenue NW., Room 1253, Washington, DC 20004, (202) 220–5304 or to *Rochelle.Durant@csosa.gov.*

For content support: William T. Miles, Congressional Affairs Specialist, Office of Legislative, Intergovernmental and Public Affairs, Court Services and Offender Supervision Agency for the District of Columbia, 633 Indiana Avenue NW., Room 1268, Washington, DC 20004, (202) 220–5344 or to *William.Miles@csosa.gov.*

SUPPLEMENTARY INFORMATION:

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

Abstract: Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they collect or sponsor. Section 3506(c)(2)(A) of the PRA (944 U.S.C. 3506(c)(2)(A) requires federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection of information to OMB for approval. To comply with this requirement, CSOSA is publishing notice of the proposed collection of information set forth in this document. The proposed information collection activity provides a means to garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

The Agency has traditionally used paper form surveys as its primary public information collection method. However, to further comply with the goals of the PRA, the Agency is planning to implement the use of online electronic survey tools to obtain customer and client feedback regarding Agency programs and supervision support services. The Agency will request authorization from OMB to add to the Agency's current paper form option provided to our public stakeholders, an electronic option to complete the Agency's standard surveys online. The contents in online version and in paper versions of the Agency's surveys will be identical.

Similar to the process used for gaining public feedback via the Agency's traditional paper form surveys, the online surveys would be forwarded to the meeting participants at the conclusion of an event or program via the participants previously registered email address. The results of the electronic surveys would be tallied by the online software and then forward to a centralized user account for further evaluation and review or to be merged with any results from completed hard copy paper surveys. Prior to implementation and use of the online survey, the Agency will conduct internal testing with fewer than nine members of the public to ensure proper functioning and ease of use.

The solicitation of feedback will target areas such as: Timeliness, appropriateness, accuracy of information, courtesy, efficiency of service delivery, and resolution of issues with service delivery. Responses will be assessed to plan and inform efforts to improve or maintain the quality of service offered to the public. If this information is not collected, vital feedback from customers and stakeholders on the Agency's services will be unavailable.

The Agency will only submit a collection for approval under this generic clearance if it meets the following conditions:

1. The collections are voluntary;

2. The collections are low-burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and are low-cost for both the respondents and the federal government;

3. The collections are non-controversial and do not raise issues of concern to other federal agencies;

4. Any collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future;

5. Personally identifiable information (PII) is collected only to the extent necessary and is not retained;

6. Information gathered will be used only internally for general service improvement and program management purposes and is not intended for release outside of the agency;

7. Information gathered will not be used for the purpose of substantially informing influential policy decisions; and

8. Information gathered will yield qualitative information; the collections will not be designed or expected to yield statistically reliable results or used as though the results are generalizable to the population of study.

Feedback collected under this generic clearance provides useful information, but it does not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior to fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

As a general matter, information collections will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

Current Actions: New collection of information.

Type of Review: New Collection.

(1) *Affected Public:* Individuals currently under CSOSA supervision. CSOSA stakeholders including criminal justice system (*e.g.,* judges, law enforcement officers) and community partners.

Estimated Number of Respondents: 450.

Below we provide projected average estimates for the next three years:

Average Expected Annual Number of Activities: 15.

Average Number of Respondents per Activity: 30.

Annual Responses: 450.

Frequency of Response: Once per request.

Average Minutes per Response: 10.
Burden Hours: 75.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) whether paper or electronic information collection is preferred and explanation regarding choice; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

Dated: April 27, 2017.

Rochelle Durant,

Program Analyst, Court Services and Offender Supervision Agency, for the District of Columbia.

[FR Doc. 2017–08911 Filed 5–2–17; 8:45 am]

BILLING CODE 3129–04–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Government-Industry Advisory Panel; Notice of Federal Advisory Committee Meeting

AGENCY: Office of the Under Secretary of Defense, Department of Defense.

ACTION: Federal advisory committee meeting notice.

SUMMARY: The Department of Defense is publishing this notice to announce the following Federal advisory committee meeting of the Government-Industry Advisory Panel. This meeting is open to the public.

DATES: The meeting will be held from 9:00 a.m. to 5:00 p.m. on Wednesday and Thursday, May 10 and 11, 2017. Public registration will begin at 8:45 a.m. on each day. For entrance into the meeting, you must meet the necessary requirements for entrance into the Pentagon. For more detailed information, please see the following link: *http://www.pfpa.mil/access.html.* The panel will also hold teleconference meetings with the same agenda to prepare for future meetings from 1:00 p.m. to 5:00 p.m. Eastern Standard Time on Wednesday, May 17, and Wednesday, May 31. Teleconference and direct connect information will be provided by the Designated Federal Officer (DFO) at the contact information in this notice.

ADDRESSES: Pentagon Library, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155. The meeting room will be displayed on the information screen for both days. The Pentagon Library is located in the Pentagon Library and Conference Center (PLC2) across the Corridor 8 bridge.

FOR FURTHER INFORMATION CONTACT: LTC Andrew Lunoff, Office of the Assistant Secretary of Defense (Acquisition), 3090 Defense Pentagon, Washington, DC 20301–3090, email: *andrew.s.lunoff.mil@mail.mil,* phone: 571–256–9004.

SUPPLEMENTARY INFORMATION: Due to circumstances beyond the control of the Designated Federal Officer and the Department of Defense, the Government-Industry Advisory Panel was unable to provide public notification concerning its meeting on May 10 through 11, 2017, as required by 41 CFR 102–3.150(a). Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

Purpose of the Meetings: This meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (FACA) (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150. The Government-Industry Advisory Panel will review sections 2320 and 2321 of title 10, United States Code (U.S.C.), regarding rights in technical data and the validation of proprietary data restrictions and the regulations implementing such sections, for the purpose of ensuring that such statutory and regulatory requirements are best structured to serve the interest of the taxpayers and the national defense. The scope of the panel is as follows: (1) Ensuring that the Department of Defense (DoD) does not pay more than once for the same work, (2) Ensuring that the DoD contractors are appropriately rewarded for their innovation and invention, (3) Providing for cost-effective reprocurement, sustainment, modification, and upgrades to the DoD systems, (4) Encouraging the private sector to invest in new products, technologies, and processes relevant to the missions of the DoD, and (5) Ensuring that the DoD has appropriate access to innovative products, technologies, and processes developed by the private sector for commercial use.

Agenda: This will be the sixteenth meeting of the Government-Industry Advisory Panel and the initial establishment of recurring teleconference meetings. The panel will cover details of 10 U.S.C. 2320 and 2321, begin understanding the implementing regulations and detail the necessary groups within the private sector and government to provide supporting documentation for their review of these codes and regulations during follow-on meetings. Agenda items for this meeting will include the following: (1) Final review of tension point information papers; (2) Rewrite FY17 NDAA 2320 and 2321 language; (3) Review Report Framework and Format for Publishing; (4) Comment Adjudication & Planning for follow-on meeting.

Availability of Materials for the Meeting: A copy of the agenda or any updates to the agenda for the May 10–11, 17 and 31 meetings will be available as requested or at the following site: *https://database.faca.gov/committee/meetings.aspx?cid=2561.* It will also be distributed upon request.

Minor changes to the agenda will be announced at the meeting. All materials will be posted to the FACA database after the meeting.

Public Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165, and subject to the availability of space, this meeting is open to the public. Registration of members of the public who wish to attend the meeting will begin upon publication of this meeting notice and end three business days (May 5) prior to the start of the meeting. All members of the public must contact LTC Lunoff at the phone number or email listed in the **FOR FURTHER INFORMATION CONTACT** section to make arrangements for Pentagon escort, if necessary. Public attendees should arrive at the Pentagon's Visitor's Center, located near the Pentagon Metro Station's south exit and adjacent to the

Pentagon Transit Center bus terminal with sufficient time to complete security screening no later than 8:30 a.m. on May 10–11. To complete security screening, please come prepared to present two forms of identification of which one must be a pictured identification card. Government and military DoD CAC holders are not required to have an escort, but are still required to pass through the Visitor's Center to gain access to the Building. Seating is limited and is on a first-to-arrive basis. Attendees will be asked to provide their name, title, affiliation, and contact information to include email address and daytime telephone number to the DFO listed in the **FOR FURTHER INFORMATION CONTACT** section. Any interested person may attend the meeting, file written comments or statements with the committee, or make verbal comments from the floor during the public meeting, at the times, and in the manner, permitted by the committee.

Special Accommodations: The meeting venue is fully handicap accessible, with wheelchair access.

Individuals requiring special accommodations to access the public meeting or seeking additional information about public access procedures, should contact LTC Lunoff, the committee DFO, at the email address or telephone number listed in the **FOR FURTHER INFORMATION CONTACT** section, at least five (5) business days prior to the meeting so that appropriate arrangements can be made.

Written Comments or Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act, the public or interested organizations may submit written comments or statements to the Government-Industry Advisory Panel about its mission and/or the topics to be addressed in this public meeting. Written comments or statements should be submitted to LTC Lunoff, the committee DFO, via electronic mail, the preferred mode of submission, at the email address listed in the **FOR FURTHER INFORMATION CONTACT** section in the following formats: Adobe Acrobat or Microsoft Word. The comment or statement must include the author's name, title, affiliation, address, and daytime telephone number. Written comments or statements being submitted in response to the agenda set forth in this notice must be received by the committee DFO at least five (5) business days prior to the meeting so that they may be made available to the Government-Industry Advisory Panel for its consideration prior to the meeting. Written comments or statements received after this date may not be provided to the panel until its next meeting. Please note that because the panel operates under the provisions of the Federal Advisory Committee Act, as amended, all written comments will be treated as public documents and will be made available for public inspection.

Verbal Comments: Members of the public will be permitted to make verbal comments during the meeting only at the time and in the manner allowed herein. If a member of the public is interested in making a verbal comment at the open meeting, that individual must submit a request, with a brief statement of the subject matter to be addressed by the comment, at least three (3) business days in advance to the committee DFO, via electronic mail, the preferred mode of submission, at the email address listed in the **FOR FURTHER INFORMATION CONTACT** section. The committee DFO will log each request to make a comment, in the order received, and determine whether the subject matter of each comment is relevant to the panel's mission and/or the topics to be addressed in this public meeting. A 30-minute period near the end of the meeting will be available for verbal public comments. Members of the public who have requested to make a verbal comment and whose comments have been deemed relevant under the process described in this paragraph, will be allotted no more than five (5) minutes during this period, and will be invited to speak in the order in which their requests were received by the DFO.

Dated: April 28, 2017.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2017–08949 Filed 5–2–17; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2017–OS–0017]

U.S. Court of Appeals for the Armed Forces Proposed Rules Changes

ACTION: Notice of availability of Proposed Changes to the Rules of Practice and Procedure of the United States Court of Appeals for the Armed Forces.

SUMMARY: This notice announces the following proposed changes to Rules 3A(a) and 21(a) of the Rules of Practice and Procedure, United States Court of Appeals for the Armed Forces. Although these rules of practice and procedure fall within the Administrative Procedure Act's exemptions for notice and comment, the Department, as a matter of policy, has decided to make these changes available for public review and comment before they are implemented.

DATES: Comments on the proposed changes must be received by June 2, 2017.

ADDRESSES: You may submit comments, identified by docket number and/or Regulatory Information Number (RIN) and title by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.*
- *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Suite 08D09B, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: William A. DeCicco, Clerk of the Court, telephone (202) 761–1448.

Dated: April 27, 2017.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Rule 3A(a):

Rule 3A(a)—SENIOR JUDGES—currently reads:

With the Senior Judge's consent, and at the request of the Chief Judge, a Senior Judge may perform judicial duties with the Court if an active Judge of the Court is disabled or has recused himself or if there is a vacancy in an active judgeship on the Court. For the periods of time when performing judicial duties with the Court, a Senior Judge shall receive the same pay, per diem, and travel allowances as an active Judge; and the receipt of pay shall be in lieu of receipt of retired pay or annuity with respect to these same periods. The periods of performance of judicial duties by a Senior Judge shall be certified by the Chief Judge and recorded by the Clerk of the Court. The Clerk of the Court shall notify the appropriate official to make timely payments of pay and allowances with

respect to periods of time when a Senior Judge is performing judicial duties with the Court and shall notify the Department of Defense Military Retirement Fund to make appropriate adjustments in the Senior Judge's retired pay or annuity. *See* Article 142(e)(2), Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 942(e)(2).

The proposed change to Rule 3A(a) would read:

With the Senior Judge's consent, and at the request of the Chief Judge, a Senior Judge may perform judicial duties with the Court if an active Judge of the Court is disabled or has recused himself or if there is a vacancy in an active judgeship on the Court. For the periods of time when performing judicial duties with the Court, a Senior Judge shall receive the same pay, per diem, and travel allowances as an active Judge. The periods of performance of judicial duties shall be certified by the Chief Judge and reported to the Court Executive who shall take appropriate steps so that the Senior Judge is paid in accordance with Article 142(e)(2), UCMJ.

Comment: The Fiscal Year 2017 National Defense Authorization Act (NDAA) amended Article 142(e)(2), UCMJ, involving the pay of a senior judge who performs judicial duties with the Court. Before the amendment was passed, retired judges had their annuities suspended while performing judicial duties and were paid as active service judges. The NDAA's amendment provides that instead of stopping the senior judge's annuity, the senior judge would continue to receive the annuity in full and also receive additional pay equal to the difference between the daily equivalent of the annual rate of pay provided for a judge of the Court and the daily equivalent of the retired pay of the senior judge under Article 145, UCMJ. Accordingly, Rule 3A(a) needs to be amended to comply with current law.

Rule 21(a):

Rule 21(a)—Supplement to Petition for Grant of Review—currently reads:

Review on petition for grant of review requires a showing of good cause. Good cause must be shown by the appellant in the supplement to the petition, which shall state with particularity the error(s) claimed to be materially prejudicial to the substantial rights of the appellant. *See* Article 59(a), UCMJ, 10 U.S.C. § 859(a).

The proposed change to Rule 21(a) would read:

Review on petition for grant of review requires a showing of good cause. Good cause should be shown by the appellant in the supplement to the petition, which shall state with particularity the error(s) claimed to be materially prejudicial to the substantial rights of the appellant. *See* Article 59(a), UCMJ, 10 U.S.C. § 859(a).

Comment: The language in the current rule that ''good cause *must* be shown'' by the appellant in the supplement has led to some litigation as to whether there is a jurisdictional requirement to raise issues, and that supplements that do not include any specific errors should be dismissed for want of jurisdiction. The Court has rejected this view when it has been raised. Amending the rule to reflect that ''good cause *should* be shown'' is the proper way to read the rule in light of Rule 21(e) which provides that when no specific errors are included in the supplement to the petition, the Court will nevertheless review the petition. Reading Rule 21(a) as mandatory would be inconsistent with Rule 21(e) and render the latter provision meaningless. The amended rule is consistent with prevailing judicial decisions and removes any confusion as to how to reconcile the subsections (a) and (e).

[FR Doc. 2017–08893 Filed 5–2–17; 8:45 am]

BILLING CODE 5001–06–P

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Sunshine Act Notice

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Notice of public business meeting.

SUMMARY: The Defense Nuclear Facilities Safety Board (Board) published a notice in the **Federal Register** of April 24, 2017 concerning a public business meeting on May 11, 2017, at the Board's headquarters located at 625 Indiana Avenue NW., Washington, DC 20004–2901. The Board supplements that notice by providing specific information for how the public may participate in the meeting.

FOR FURTHER INFORMATION CONTACT: Glenn Sklar, General Manager, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW., Suite 700, Washington, DC 20004–2901, (800) 788–4016. This is a toll-free number.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 24, 2017, in 82 FR 18902, the Board announced its intention to hold a public meeting at its headquarters on May 11, 2017. The Board has amended the public meeting agenda to provide a specific opportunity for members of the public to comment on the agenda item. The Board will invite public comment during the public comment period of the agenda on the Defense Nuclear Facilities Safety Board staff's effort to develop a potential scorecard regarding safety oversight of Defense Nuclear Facilities. The amended agenda is available on the Board's public Web site at *https://www.dnfsb.gov/public-hearings-meetings/may-11-2017-public-business-meeting.*

Persons interested in speaking during the public comment period are encouraged to pre-register by submitting a request to the Board by telephone to the Office of the General Counsel at (202) 694–7062 prior to close of business on May 10, 2017. The Board requests that commenters limit the nature and scope of their oral comments to the subject of the agenda. Those who pre-register will be scheduled to speak first. Individual oral comments may be limited by the time available, depending on the number of persons who register. At the beginning of the meeting, the Board will post a list of speakers at the entrance to the meeting room. Anyone who wishes to comment or provide technical information or data may do so in writing, either in lieu of, or in addition to, making an oral presentation. The Board Members may question presenters to the extent deemed appropriate.

Dated: May 1, 2017.

Joseph Bruce Hamilton,

Vice Chairman.

[FR Doc. 2017–08996 Filed 5–1–17; 4:15 pm]

BILLING CODE 3670–01–P

DELAWARE RIVER BASIN COMMISSION

Notice of Public Hearing and Business Meeting May 17 and June 14, 2017

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, May 17, 2017. A business meeting will be held the following month, on Wednesday, June 14, 2017. The hearing and business meeting are open to the public and will be held at the Washington Crossing Historic Park Visitor Center, 1112 River Road, Washington Crossing, Pennsylvania.

Public Hearing. The public hearing on May 17, 2017 will begin at 1:30 p.m. Hearing items will include draft dockets for withdrawals, discharges, and other water-related projects subject to the Commission's review, and two FY–2018 budget resolutions: (1) A resolution to

apportion among the signatory parties the amounts required for the support of the current expense and capital budgets for the fiscal year ending June 30, 2018 (July 1, 2017 through June 30, 2018); and (2) a resolution to adopt the Commission's annual current expense and capital budgets for the fiscal year ending June 30, 2018 (July 1, 2017 through June 30, 2018).

The list of projects scheduled for hearing, including project descriptions, will be posted on the Commission's Web site, *www.drbc.net,* in a long form of this notice at least ten days before the hearing date. The draft resolutions scheduled for hearing also will be posted at *www.drbc.net* ten or more days prior to the hearing.

Written comments on matters scheduled for hearing on May 17 will be accepted through 5:00 p.m. on May 22. Time permitting, an opportunity for Open Public Comment will be provided upon the conclusion of Commission business at the June 14 Business Meeting; in accordance with recent format changes, this opportunity will not be offered upon completion of the Public Hearing.

The public is advised to check the Commission's Web site periodically prior to the hearing date, as items scheduled for hearing may be postponed if additional time is deemed necessary to complete the Commission's review, and items may be added up to ten days prior to the hearing date. In reviewing docket descriptions, the public is also asked to be aware that project details commonly change in the course of the Commission's review, which is ongoing.

Public Meeting. The public business meeting on June 14, 2017 will begin at 10:30 a.m. and will include: Adoption of the Minutes of the Commission's March 15, 2017 Business Meeting, announcements of upcoming meetings and events, a report on hydrologic conditions, reports by the Executive Director and the Commission's General Counsel, and consideration of any items for which a hearing has been completed or is not required. The latter are expected to include a resolution for the Minutes providing for election of the Commission Chair, Vice Chair and Second Vice Chair for the year commencing July 1, 2017 and ending June 30, 2018.

After all scheduled business has been completed and as time allows, the Business Meeting will also include up to one hour of Open Public Comment.

There will be no opportunity for additional public comment for the record at the June 14 Business Meeting on items for which a hearing was completed on May 17 or a previous date. Commission consideration on June 14 of items for which the public hearing is closed may result in approval of the item (by docket or resolution) as proposed, approval with changes, denial, or deferral. When the Commissioners defer an action, they may announce an additional period for written comment on the item, with or without an additional hearing date, or they may take additional time to consider the input they have already received without requesting further public input. Any deferred items will be considered for action at a public meeting of the Commission on a future date.

Advance Sign-Up for Oral Comment. Individuals who wish to comment on the record during the public hearing on May 17 or to address the Commissioners informally during the Open Public Comment portion of the meeting on June 14 as time allows, are asked to sign up in advance by contacting Ms. Paula Schmitt of the Commission staff, at *paula.schmitt@drbc.nj.gov.*

Addresses for Written Comment. Written comment on items scheduled for hearing may be delivered by hand at the public hearing or: By hand, U.S. Mail or private carrier to: Commission Secretary, P.O. Box 7360, 25 Cosey Road, West Trenton, NJ 08628; by fax to Commission Secretary, DRBC at 609–883–9522; or by email (preferred) to *paula.schmitt@drbc.nj.gov.* If submitted by email, written comments on a docket should also be sent to Mr. David Kovach, Manager, Project Review Section at *david.kovach@drbc.nj.gov.*

Accommodations for Special Needs. Individuals in need of an accommodation as provided for in the Americans with Disabilities Act who wish to attend the informational meeting, conference session or hearings should contact the Commission Secretary directly at 609–883–9500 ext. 203 or through the Telecommunications Relay Services (TRS) at 711, to discuss how we can accommodate your needs.

Additional Information, Contacts. Additional public records relating to hearing items may be examined at the Commission's offices by appointment by contacting Carol Adamovic, 609–883–9500, ext. 249. For other questions concerning hearing items, please contact Judith Scharite, Project Review Section assistant at 609–883–9500, ext. 216.

Dated: April 27, 2017.

Pamela M. Bush,

Commission Secretary and Assistant General Counsel.

[FR Doc. 2017–08919 Filed 5–2–17; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF EDUCATION

[Docket ID ED–2016–OGC–0129]

Privacy Act of 1974; System of Records

AGENCY: Office of General Counsel, Department of Education.

ACTION: Notice of a modified system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Education (the Department) publishes this notice of a modified system of records entitled ''Department of Education Federal Docket Management System (EDFDMS) (18–09–05).'' EDFDMS contains individually identifying information voluntarily provided by individuals who submit public comments on the Department's rulemaking documents that are in the Federal Docket Management System (FDMS). FDMS is an interagency system that allows the public to search, view, download, and comment on Federal agency rulemaking documents through a single online system. The public accesses the FDMS Web portal at *http://www.regulations.gov.*

DATES: Submit your comments on this modified system of records notice on or before June 2, 2017.

The Department filed a report describing the modified system of records covered by this notice with the Chair of the Senate Committee on Homeland Security and Governmental Affairs, the Chair of the House Committee on Oversight and Government Reform, and the Deputy Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), on March 29, 2017. This modified system of records will become effective upon publication in the **Federal Register** on May 3, 2017, unless the modified system of records notice needs to be changed as a result of public comment. Newly proposed routine use (10) in the paragraph entitled ''ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES'' will become effective on June 2, 2017, unless the modified system of records notice needs to be changed as a result of public comment. The Department will publish any significant changes resulting from public comment.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email

or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

• *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using *Regulations.gov*, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under the ''help'' tab.

• *Postal Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments about this modified system of records, address them to: Hilary Malawer, Assistant General Counsel, Regulatory Services Division, Office of the General Counsel, U.S. Department of Education, 400 Maryland Avenue SW., Washington, DC 20202–6110

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Hilary Malawer, Assistant General Counsel, Regulatory Services Division, Office of the General Counsel. Telephone: (202) 401–6148.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Introduction: The Privacy Act of 1974, as amended (Privacy Act) (5 U.S.C. 552a), requires the Department to publish in the **Federal Register** this notice of a modified system of records maintained by the Department. The Department's regulations implementing the Privacy Act are contained in the Code of Federal Regulations (CFR) in 34 CFR part 5b. The Privacy Act applies to information about an individual that contains individually identifiable information that is retrieved by a unique identifier associated with each individual, such as a name or Social Security number. The information about each individual is called a ''record,'' and the system, whether manual or computer-based, is called a ''system of records.'' The Privacy Act requires each agency to publish notices of systems of records in the **Federal Register** and to prepare reports for OMB whenever the agency publishes a new system of records or makes a significant change to an established system of records. Each agency is also required to send copies to the Chair of the Senate Committee on Governmental Affairs and the Chair of the House Committee on Government Reform. These reports are intended to permit an evaluation of the probable or potential effect of the proposal on the privacy or other rights of individuals.

The Department of Education Federal Docket Management System (EDFDMS) (18–09–05) system of records was last published in the **Federal Register** on November 27, 2007 (72 FR 66155). The system is being modified to provide a more precise description of the purpose of this system of records, which is to facilitate public participation in the rulemaking process through electronic means. The system is also being modified to update how the information is stored utilizing updated security hardware and software, including multiple firewalls, active intruder detection, and role-based access controls. The retention and disposition schedule is also being updated to reflect the specific Department records schedule related to this system.

The Department also proposes to add to this system of records notice a new routine use (10) entitled ''Disclosure in Assisting another Agency in Responding to a Breach of Data''. This will allow the Department to disclose records in this system to another Federal agency or entity in order to assist the recipient agency in responding to a suspected or confirmed breach of data.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of the Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site. You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: April 28, 2017.

Phillip H. Rosenfelt,

Acting General Counsel.

SYSTEM NAME AND NUMBER:

Department of Education Federal Docket Management System (EDFDMS) (18–09–05).

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

The central location is at the U.S. Environmental Protection Agency, Research Triangle Park, NC 27711–0001. Access is available through the Internet from other locations.

SYSTEM MANAGER:

Assistant General Counsel, Regulatory Services Division, Office of the General Counsel, U.S. Department of Education, 400 Maryland Avenue SW., Washington, DC 20202–6110.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 206(d) of the E-Government Act of 2002 (Pub. L. 107–347, 44 U.S.C. 3501 note); 20 U.S.C. 3474; 20 U.S.C. 1221e–3; 5 U.S.C. 301; and 5 U.S.C. 553.

PURPOSE(S) OF THE SYSTEM:

The purpose of this system of records is to provide the public a central online location to search, view, download, and comment on Federal rulemaking documents.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Information on individuals who voluntarily provide individually identifying information when submitting a public comment or supporting materials in response to a Department of Education (Department) rulemaking document or notice in the Federal Docket Management System (FDMS) are covered by this system. Although this system may also contain information on and public comments submitted by representatives of governmental or organizational entities, the purpose for which the Department is

establishing this system of records is only to cover individuals protected under the Privacy Act of 1974, as amended (Privacy Act) (5 U.S.C. 552a(a)(2)).

CATEGORIES OF RECORDS IN THE SYSTEM:

The categories of records in the system include: First name, last name, category (such as parent/relative, student, teacher, local educational agency, or lender), city, country, State or province, email address, organization name, submitter's representative, government agency type, government agency, additional information provided in the ''General Comments'' section, and other supporting documentation furnished by the submitter.

RECORD SOURCE CATEGORIES:

Information maintained in this system of records is obtained from anyone who chooses to voluntarily submit a public comment or supporting materials in response to a Department rulemaking document or notice, including individuals and representatives of Federal, State or local governments, businesses, and other organizations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Department may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Privacy Act, under a computer matching agreement.

(1) *Disclosure to the Public.* With few exceptions, the Department may disclose information in EDFDMS to any member of the public. EDFDMS permits members of the public to search the public comments that are received by the Department and included in FDMS by the name of the individual submitting the comment. Unless the individual submits a comment anonymously, a full-text search, using the individual's name, will generally result in the comment and the commenter's information being displayed for view. With few exceptions, comments that are submitted using the FDMS system will include any information that the commenter provided when submitting the comment. In addition, with few exceptions, comments that are submitted in writing and then scanned and uploaded into the FDMS system will include any identifying information about the submitter that is provided in the written comment. If a commenter provides individually identifying information about a third party, a full-text search using the third party's name, with some exceptions, will result in the third party's information being displayed for view.

Note: Identification of an individual commenter or third party is possible only if the commenter voluntarily provides his or her name or contact information, or that of a third party. If this information is not furnished, the submitted comments or supporting documentation cannot be linked to the commenter or a third party.

(2) *Disclosure for Use by Other Law Enforcement Agencies.* The Department may disclose information to any Federal, State, local, or foreign agency, or other public authority responsible for enforcing, investigating, or prosecuting violations of administrative, civil, or criminal law or regulation if that information is relevant to any enforcement, regulatory, investigative, or prosecutorial responsibility within the receiving entity's jurisdiction.

(3) *Enforcement Disclosure.* In the event that information in this system of records indicates, either on its face or in connection with other information, a violation or potential violation of any applicable statute, regulation, or order of a competent authority, the Department may disclose the relevant records to the appropriate agency, whether foreign, Federal, State, Tribal, or local, charged with the responsibility of investigating or prosecuting that violation or charged with enforcing or implementing the statute, Executive order, rule, regulation, or order issued pursuant thereto.

(4) *Litigation and Alternative Dispute Resolution (ADR) Disclosure.*

(a) *Introduction.* In the event that one of the parties listed below is involved in judicial or administrative litigation or ADR, or has an interest in judicial or administrative litigation or ADR, the Department may disclose certain records to the parties described in paragraphs (b), (c), and (d) of this routine use under the conditions specified in those paragraphs:

(i) The Department or any of its components.

(ii) Any Department employee in his or her official capacity.

(iii) Any Department employee in his or her individual capacity if the U.S. Department of Justice (DOJ) has been requested to or has agreed to provide or arrange for representation for the employee.

(iv) Any Department employee in his or her individual capacity where the Department has agreed to represent the employee.

(v) The United States where the Department determines that the litigation is likely to affect the Department or any of its components.

(b) *Disclosure to DOJ.* If the Department determines that disclosure of certain records to DOJ is relevant and necessary to litigation or ADR, the Department may disclose those records as a routine use to DOJ.

(c) *Adjudicative Disclosure.* If the Department determines that it is relevant and necessary to the litigation or ADR to disclose certain records to an adjudicative body before which the Department is authorized to appear, to an individual, or to an entity designated by the Department or otherwise empowered to resolve or mediate disputes, the Department may disclose those records as a routine use to the adjudicative body, individual, or entity.

(d) *Disclosure to parties, counsels, representatives, or witnesses.* If the Department determines that disclosure of certain records to a party, counsel, representative, or witness is relevant and necessary to the litigation or ADR, the Department may disclose those records as a routine use to the party, counsel, representative, or witness.

(5) *Freedom of Information Act (FOIA) and Privacy Act Advice Disclosure.* The Department may disclose records to DOJ or the Office of Management and Budget if the Department concludes that disclosure is desirable or necessary in determining whether particular records are required to be disclosed under the FOIA or the Privacy Act.

(6) *Disclosure to DOJ.* The Department may disclose records to DOJ to the extent necessary for obtaining DOJ advice on any matter relevant to an audit, inspection, or other inquiry related to the programs covered by this system.

(7) *Contract Disclosure.* If the Department contracts with an entity for the purposes of performing any function that requires disclosure of records in this system to employees of the contractor, the Department may disclose the records to those employees. Before entering into such a contract, the Department shall require the contractor to maintain Privacy Act safeguards as required under 5 U.S.C. 552a(m) with respect to the records in the system.

(8) *Congressional Member Disclosure.* The Department may disclose the records of an individual to a member of Congress or the member's staff in response to an inquiry from the member

made at the written request of that individual. The member's right to the information is no greater than the right of the individual who requested the inquiry.

(9) *Disclosure in the Course of Responding to a Breach of Data.* The Department may disclose records from this system to appropriate agencies, entities, and persons when (1) the Department suspects or has confirmed that there has been a breach of the system of records; (2) the Department has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Department (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed beach or to prevent, minimize, or remedy such harm.

(10) *Disclosure in Assisting another Agency in Responding to a Breach of Data.* The Department may disclose records from this system to another Federal agency or Federal entity, when the Department determines that information from this system of records is reasonably necessary to assist the recipient agency or entity (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

EDFDMS security protocols meet all required security standards issued by the National Institute of Standards and Technology (NIST). Records in EDFDMS are maintained in a secure, password protected electronic system that utilizes security hardware and software to include multiple firewalls, active intruder detection, and role-based access controls.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

EDFDMS enables record retrieval by various data elements and key word searches. These data elements are: Document identification number, comment tracking number, document title, Code of Federal Regulation (CFR) (search for a specific title within the CFR), CFR citation (search for the part or parts within the CFR title being searched), document type, document sub type, date posted, and comment period end date.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

The records in this system will be retained and disposed of in accordance with the Department's Record Schedule ED 253—Rulemaking Case Files. Under ED 253 part C, Notices of Proposed Rulemaking, Public Comments, and Negotiated Rulemaking Records, records are temporary. The date to start the clock for record-keeping purposes is December 31 of the year in which the final rule was published. Records in this system will be destroyed/deleted five years after publication.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

As discussed above in routine use (1), *Disclosure to the Public,* any member of the public who accesses FDMS through *http://www.regulations.gov* and searches the comments associated with the Department's rulemakings can view EDFDMS records that are included in FDMS.

To the extent paper records from this system of records are maintained, they will be maintained in a controlled facility where physical entry is restricted by locks, guards, and administrative procedures.

Access to electronic and paper EDFDMS records that are not otherwise available to the public through FDMS is limited to those Department and contract staff who require the records to perform their official duties consistent with the purposes for which the information was collected. Personnel whose official duties require access to either electronic or written EDFDMS records that are not otherwise available to the public through FDMS are trained in the proper safeguarding and use of the information.

RECORD ACCESS PROCEDURES:

If you wish to request access to your records, you should contact the system manager at the address listed under SYSTEM MANAGER AND ADDRESS. Requests should contain your full name, address, and telephone number. Your request must meet the requirements of regulations in 34 CFR 5b.5, including proof of identity.

CONTESTING RECORD PROCEDURES:

If you wish to contest the content of a record regarding you in the system of records, contact the system manager. Your request must meet the requirements of the regulations in 34 CFR 5b.7, including proof of identity.

NOTIFICATION PROCEDURE:

If you wish to inquire whether a record exists regarding you in this system, you should contact the system manager at the address listed above. You must provide your full name, address, and telephone number. Your request must meet the requirements of the Department's Privacy Act regulations at 34 CFR 5b.5, including proof of identity.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

The Department of Education Federal Docket Management System (EDFDMS) (18–09–05) system of records was last published in the **Federal Register** on November 27, 2007 (72 FR 66155).

[FR Doc. 2017–08950 Filed 5–2–17; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2017–ICCD–0012]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Teacher Incentive Fund Annual Performance Report

AGENCY: Department of Education (ED), Office of Innovation and Improvement (OII).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before June 2, 2017.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2017–ICCD–0012. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education,

400 Maryland Avenue SW., LBJ, Room 226–62, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Tyra Stewart, 202–260–1847.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Teacher Incentive Fund Annual Performance Report.

OMB Control Number: 1855–0030.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: State, Local and Tribal Governments.

Total Estimated Number of Annual Responses: 45.

Total Estimated Number of Annual Burden Hours: 2,070.

Abstract: The Teacher Incentive Fund (TIF) is a competitive grant program. The purpose of the TIF program is to support projects that develop and implement performance-based compensation systems (PBCSs) for teachers and principals in order to increase educator effectiveness and student achievement in high-need schools. The Department will use the data collected through the performance reports to determine the progress of each grant and to determine the continuation of funding each year.

Dated: April 27, 2017.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2017–08895 Filed 5–2–17; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Savannah River Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Savannah River Site. The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

DATES:

Monday, May 22, 2017, 1:00 p.m.–5:00 p.m.

Tuesday, May 23, 2017, 9:00 a.m.–5:00 p.m.

ADDRESSES: Hilton Garden Inn, 1065 Stevens Creek Road, Augusta, GA 30907.

FOR FURTHER INFORMATION CONTACT: Susan Clizbe, Office of External Affairs, Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29802; Phone: (803) 952–8281.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

Monday, May 22, 2017

Opening and Agenda Review
Combined Committees Session
Order of committees:
- Nuclear Materials
- Facilities Disposition & Site Remediation
- Strategic & Legacy Management
- Waste Management

Public Comments
Adjourn

Tuesday, May 23, 2017

Opening, Minutes Approval, Chair Update, and Agenda Review
Agency Updates
Public Comments
Break
Administrative & Outreach Committee Update
Nuclear Materials Committee Update
Lunch Break
Strategic & Legacy Management Committee Update
Waste Management Committee Update
Break
Facilities Disposition & Site Remediation Committee Update
Board Discussion: Meeting Format
Public Comments
Adjourn

Public Participation: The EM SSAB, Savannah River Site, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Susan Clizbe at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Susan Clizbe's office at the address or telephone listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Susan Clizbe at the address or phone number listed above. Minutes will also be available at the following Web site: *http://cab.srs.gov/srs-cab.html.*

Issued at Washington, DC, on April 27, 2017.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2017–08926 Filed 5–2–17; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Proposed Agency Information Collection Regarding the Energy Priorities and Allocations System

AGENCY: U.S. Department of Energy.

ACTION: Notice and Request for Comments.

SUMMARY: The Department of Energy (DOE) invites public comment on a proposed extension of a collection of information that DOE is developing for submission to the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995.

DATES: Comments regarding this proposed information collection extension must be received on or before July 3, 2017. If you anticipate difficulty in submitting comments within that period, contact the person listed in **ADDRESSES** as soon as possible.

ADDRESSES: Written comments may be sent to Dr. Kenneth Friedman, U.S. Department of Energy, OE–30, 1000 Independence Avenue SW., Washington, DC 20585 or by fax at 202–586–2623, or by email at *Kenneth.friedman@hq.doe.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Dr. Kenneth Friedman, U.S. Department of Energy, OE–30, 1000 Independence Avenue SW., Washington, DC 20585.

SUPPLEMENTARY INFORMATION: This information collection request contains: (1) OMB No. 1910–5159; (2) Information Collection Request Title: Energy Priorities and Allocations System; (3) Type of Request: Extension; (4) Purpose: To meet requirements of the Defense Production Act (DPA) priorities and allocations authority with respect to all forms of energy necessary or appropriate to promote the national defense. Data supplied will be used evaluate applicants requesting special priorities assistance to fill a rated order issued in accordance with the DPA and DOE's implementing regulations. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

This data will also be used to conduct audits and for enforcement purposes. This collection will only be used if the Secretary of Energy determines that his authority under the DPA is necessary to prevent or address an energy shortage or energy reliability concern. The last collection by DOE under this authority was in 2001; (5) Annual Estimated Number of Respondents: 10, as this collection is addressed to a substantial majority of the energy industry; (6) Annual Estimated Number of Total Responses: 10, as this collection is addressed to a substantial majority of the energy industry; (7) Annual Estimated Number of Burden Hours: 32 minutes per response; (8) Annual Estimated Reporting and Recordkeeping Cost Burden: $0.

Statutory Authority: Defense Production Act of 1950 as amended (50 U.S.C. 4501, *et seq.*); Executive Order 13603.

Issued in Washington, DC, on April 2017.

Devon Streit,

Deputy Assistant Secretary,

Office of Electricity Delivery and Energy Reliability.

[FR Doc. 2017–08936 Filed 5–2–17; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Certification Notice—245]

Notice of Filing of Self-Certification of Coal Capability Under the Powerplant and Industrial Fuel Use Act

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of filing.

SUMMARY: On March 20, 2017, PSEG Fossil, LLC, as owner and operator of a new baseload electric generating powerplant, submitted a coal capability self-certification to the Department of Energy (DOE) pursuant to § 201(d) of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended, and DOE regulations. The FUA and regulations thereunder require DOE to publish a notice of filing of self-certification in the **Federal Register**.

ADDRESSES: Copies of coal capability self-certification filings are available for public inspection, upon request, in the Office of Electricity Delivery and Energy Reliability, Mail Code OE–20, Room 8G–024, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Christopher Lawrence at (202) 586–5260.

SUPPLEMENTARY INFORMATION: On March 20, 2017, PSEG Fossil, LLC, as owner and operator of a new baseload electric generating powerplant, submitted a coal capability self-certification to the Department of Energy (DOE) pursuant to § 201(d) of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended, and DOE regulations in 10 CFR 501.60, 61. The FUA and regulations thereunder require DOE to publish a notice of filing of self-certification in the **Federal Register**. 42 U.S.C. 8311(d) and 10 CFR 501.61(c).

Title II of FUA, as amended (42 U.S.C. 8301 *et seq.*), provides that no new base load electric powerplant may be constructed or operated without the capability to use coal or another alternate fuel as a primary energy source. Pursuant to the FUA, in order to meet the requirement of coal capability, the owner or operator of such a facility proposing to use natural gas or petroleum as its primary energy source shall certify to the Secretary of Energy (Secretary) prior to construction, or prior to operation as a base load electric powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with FUA section 201(a) as of the date it is filed with the Secretary. 42 U.S.C. 8311.

The following owner of a proposed new baseload electric generating powerplant has filed a self-certification of coal-capability with DOE pursuant to FUA section 201(d) and in accordance with DOE regulations in 10 CFR 501.60, 61:

Owner: PSEG Fossil, LLC.
Capacity: 755 megawatts (MW).
Plant Location: Brandywine, MD 20613.
In-Service Date: May 2018.

Issued in Washington, DC, on April 11, 2017.

Brian Mills,

Senior Planning Advisor, Office of Electricity Delivery and Energy Reliability.

[FR Doc. 2017–08736 Filed 5–2–17; 8:45 am]

BILLING CODE 6450–01–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Sunshine Act; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act, of the regular meeting of the Farm Credit Administration Board (Board).

DATES: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on May 11, 2017, from 9:00 a.m. until such time as the Board concludes its business.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090. Submit attendance requests via email to *VisitorRequest@FCA.gov.* See **SUPPLEMENTARY INFORMATION** for further information about attendance requests.

FOR FURTHER INFORMATION CONTACT: Dale L. Aultman, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts will be closed to the public. Please send an email to *VisitorRequest@FCA.gov* at least 24 hours before the meeting. In your email include: Name, postal address, entity you are representing (if applicable), and telephone number. You will receive an email confirmation from us. Please be prepared to show a photo identification when you arrive. If you need assistance for accessibility reasons, or if you have any questions, contact Dale L. Aultman, Secretary to the Farm Credit Administration Board, at (703) 883–4009. The matters to be considered at the meeting are:

Open Session

A. *Approval of Minutes*

- April 13, 2017

B. *New Business*

- Regulatory Burden: Notice of Intent and Request for Comment

Closed Session *

Report

- Office of Secondary Market Oversight Periodic Report

Dated: May 1, 2017.

Dale L. Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2017–08991 Filed 5–1–17; 11:15 am]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0589]

Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before June 2, 2017. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@omb.eop.gov;* and to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Nicole Ongele at (202) 418–2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain*, (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

OMB Control Number: 3060–0589.

Title: FCC Remittance Advice Forms, FCC Form 159/159–C, 159–B, 159–E, and 159–W.

Form Number(s): FCC Form 159 Remittance Advice, 159–C Remittance Advice Continuation Sheet, 159–B Remittance Advice Bill for Collection, 159–E Remittance Voucher, and 159–W Interstate Telephone Service Provider Worksheet.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit entities; individuals or households; not-for-profit institutions; and State, local, or tribal governments.

Number of Respondent and Responses: 102,405 respondents; 102,405 responses.

Estimated Time per Response: 15 minutes (0.25 hours).

Frequency of Response: On occasion and annual reporting requirements; third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory Authority for this information collection is contained in the Communications Act of 1934, as amended; Section 8 (47 U.S.C. 158) for Application Fees; Section 9 (47 U.S.C. 159) for Regulatory Fees; Section 309(j) for Auction Fees; and the Debt Collection Improvement Act of 1996, Public Law 104–134, Chapter 10, Section 31001.

Total Annual Burden: 25,601 hours.

Total Annual Cost: No Cost.

Nature and Extent of Confidentiality: There is no need for confidentiality, except for personally identifiable information (PII) that individuals may submit on one or more of these forms. FCC Form 159 series instructions include a Privacy Act Statement. Furthermore, while the Commission is not requesting that the respondents submit confidential information to the FCC, respondents may request

* Session Closed—Exempt pursuant to 5 U.S.C. Section 552b(c)(8) and (9).

confidential treatment for information they believe to be confidential under 47 CFR Section 0.459 of the Commission's rules. The Commission has a system of records notice (SORN), FCC/OMD–25, Financial Operations Information System (FOIS), to cover any PII that individuals may submit. The SORN is posted on the FCC Privacy Web page at: *https://www.fcc.gov/general/privacy-act-information#systems.* Privacy Impact Assessment (PIA): A PIA is being drafted and posted on the FCC Privacy Web page at: *https://www.fcc.gov/general/privacy-act-information#systems.*

Needs and Uses: The FCC supports a series of remittance advice forms and a remittance voucher form that may be submitted in lieu of a remittance advice form when entities or individuals electronically submit a payment. A remittance advice form (or a remittance voucher form in lieu of an advice form) must accompany any payment to the Federal Communications Commission (*e.g.* payments for regulatory fees, application filing fees, auctions, fines, forfeitures, Freedom of Information Act (FOIA) billings, or any other debt due to the FCC. Information is collected on these forms to ensure credit for full payment, to ensure entities and individuals receive any refunds due, to service public inquiries, and to comply with the Debt Collection Improvement Act of 1996. On August 12, 2013 the Commission released a Report and Order (R&O), In the Matter Assessment and Collection of Regulatory Fee for Fiscal Year 2013 and Procedures for Assessment and Collection of Regulatory Fees, MD Docket Nos. 13–140 and 12–201, FCC 13–110. In this R&O, the Commission requires that beginning in FY 2014, all regulatory fee payments be made electronically and that the Commission will no longer mail out initial regulatory fee assessments to CMRS providers.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2017–08954 Filed 5–2–17; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0463]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before July 3, 2017. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email: *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, and as required by the PRA, 44 U.S.C. 3501–3520, the FCC invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

OMB Control Number: 3060–0463.

Title: Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CG Docket No. 03–123, FCC 03–112, FCC 07–110, FCC 07–186.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Businesses or other for-profit entities; State, Local and Tribal Government.

Number of Respondents and Responses: 3,510 respondents and 3,680 responses.

Estimated Time per Response: 1–15 hours.

Frequency of Response: Annual and on-occasion reporting requirement; Recordkeeping requirement; Third Party Disclosure.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority can be found at section 225 of the Communications Act, 47 U.S.C. 225. The law was enacted on July 26, 1990, as Title IV of the Americans with Disabilities Act of 1990, Public Law 101–336, 104 Stat. 327.

Total Annual Burden: 5,260 hours.

Total Annual Cost: $1,600.

Nature and Extent of Confidentiality: An assurance of confidentiality is not offered because this information collection does not require the collection of personally identifiable information from individuals.

Privacy Impact Assessment: No impact(s).

Needs and Uses: The Commission is submitting this modified information collection to the Office of Management and Budget (OMB) to transfer burden hours and costs associated with regulations under section 225 of the Communications Act (Act), as previously approved under OMB control number 3060–1047, to this information collection. The Commission intends to discontinue information collection 3060–1047 once this information collection is approved.

In 2003, the Commission released the *2003 Second Improved TRS Order,* published at 68 FR 50973, August 25, 2003, which among other things

required that TRS providers offer certain local exchange carrier (LEC)-based improved services and features where technologically feasible, including a speed dialing requirement which may entail voluntary recordkeeping for TRS providers to maintain a list of telephone numbers. *See also* 47 CFR 64.604(a)(3)(vi)(B).

In 2007, the Commission released the *Section 225/255 VoIP Report and Order,* published at 72 FR 43546, August 6, 2007, extending the disability access requirements that apply to telecommunications service providers and equipment manufacturers under 47 U.S.C. 225, 255 to interconnected voice over Internet protocol (VoIP) service providers and equipment manufacturers. As a result, under rules implementing section 225 of the Act, interconnected VoIP service providers are required to publicize information about telecommunications relay services (TRS) and 711 abbreviated dialing access to TRS. *See also* 47 CFR 64.604(c)(3).

In 2007, the Commission released the *2007 Cost Recovery Report and Order and Declaratory Ruling,* published at 73 FR 3197, January 17, 2008, in which the Commission requires that TRS providers submit to the TRS Fund Administrator the following information annually for intrastate traditional TRS, STS, and CTS: (a) The per-minute compensation rate(s); (b) whether the rate applies to session minutes or conversation minutes; (c) the number of intrastate session minutes; and (d) the number of intrastate conversation minutes. Also, STS providers must file a report annually with the TRS Fund Administrator and the Commission on their specific outreach efforts directly attributable to the additional compensation approved by the Commission for STS outreach. *See also* 47 CFR 64.604(c)(5)(iii)(D).

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2017–08889 Filed 5–2–17; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in the **Federal Register**. Copies of the agreement are available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 012295–003.

Title: Hoegh/Hyundai Glovis Middle East Space Charter Agreement.

Parties: Hoegh Autoliners AS and Hyundai Glovis Co. Ltd.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Connor; 1200 Nineteenth Street NW., Washington, DC 20036.

Synopsis: The amendment would add Algeria, Djibouti, Egypt, Ethiopia, Greece, Iraq, Morocco, Pakistan, Sudan, Tunisia and Turkey to the scope of the agreement, and convert the agreement to a two-way space charter.

Agreement No.: 012279–003.

Title: Hyundai Glovis/Grimaldi Space Charter Agreement.

Parties: Hyundai Glovis Co. Ltd. and Grimaldi Deep Sea S.p.A. and Grimaldi Euromed S.p.A. (acting as a single party).

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Conner; 1200 Nineteenth Street NW., Washington, DC 20036.

Synopsis: The amendment revises the geographic scope of the agreement to include all ports in Germany and Belgium and to include Italy, and revises the address of Hyundai Glovis.

Agreement No.: 012410–001.

Title: WWL/Hyundai Glovis Space Charter Agreement.

Parties: Wallenius Wilhelmsen Logistics AS and Hyundai Glovis Co. Ltd.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Connor LLP; 1200 Nineteenth St. NW., Washington, DC 200036.

Synopsis: The amendment deletes the expiration date of the agreement and makes the duration of the agreement indefinite.

Agreement No.: 012482.

Title: Schuyler Line/US Ocean Space Charter and Cooperative Working Agreement.

Parties: Schuyler Line Navigation Company, L.L.C. and U.S. Ocean, L.L.C.

Filing Party: Bryant Gardner, Esq.; Winston & Strawn; 1700 K Street NW., Washington, DC 20006.

Synopsis: The agreement would authorize the Parties to charter space on each other's vessels in the trade between the U.S. and certain countries in Europe, the Middle East, Africa, the Caribbean, Central America and South America.

Agreement No.: 201103–012.

Title: Memorandum Agreement of the Pacific Maritime Association of December 14, 1983 Concerning Assessments to Pay ILWU–PMA Employee Benefit Costs, As Amended, Through April 18, 2017.

Parties: Pacific Maritime Association and International Longshore and Warehouse Union.

Filing Party: David F. Smith, Esq.; Cozen O'Connor; 1200 19th Street NW., Washington, DC 20036.

Synopsis: The amendment revises how the man-hour base assessment will be calculated.

By Order of the Federal Maritime Commission.

Dated: April 28, 2017.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2017–08940 Filed 5–2–17; 8:45 am]

BILLING CODE 6731–AA–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 30, 2017.

A. Federal Reserve Bank of Atlanta (Chapelle Davis, Assistant Vice President), 1000 Peachtree Street NE., Atlanta, Georgia 30309. Comments can also be sent electronically to *Applications.Comments@atl.frb.org:*

1. *Piedmont Bancorp, Inc.,* Norcross, Georgia; to merge with Mountain Valley Bancshares, Inc., and thereby indirectly acquire, Mountain Valley Community Bank, both of Cleveland, Georgia.

B. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President), 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *West Town Bancorp, Inc.,* Raleigh, North Carolina; to acquire 100 percent of the outstanding voting shares of Sound Banking Company, Morehead City, North Carolina.

Board of Governors of the Federal Reserve System, April 27, 2017.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2017–08890 Filed 5–2–17; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in or To Acquire Companies Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 17, 2017.

A. Federal Reserve Bank of Boston (Prabal Chakrabarti, Senior Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02210–2204. Comments can also be sent electronically to *BOS.SRC.Applications.Comments@bos.frb.org:*

1. Narragansett Financial Corp., Swansea, Massachusetts; to retain 80 percent of the voting shares of Plimoth Trust Company, LLC. Plimoth Massachusetts, and thereby engage in trust company activities pursuant to section 225.28(b)(5).

In addition, Plimoth has applied to acquire certain assets and assume certain liabilities from Savings Institute Bank and Trust Company, Willimantic, Connecticut.

Board of Governors of the Federal Reserve System, April 27, 2017.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2017–08854 Filed 5–2–17; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[CDC–2015–0021; Docket Number NIOSH–153–C]

Issuance of Final Guidance Publications

AGENCY: National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of issuance of final guidance publications.

SUMMARY: NIOSH announces the availability of the following final 5 Skin Notation Profiles: Acrylic acid [CAS No. 79–01–7], Dichlorvos [CAS No. 62–73–7], Morpholine [CAS No. 110–91–8], Ethyl p-nitrophenyl phenylphosphorothioate (EPN) [CAS No. 2104–64–5], Dioxathion [CAS No. 78–34–2].

DATES: The final Skin Notation Profiles documents were published on April 10, 2017.

ADDRESSES: These documents may be obtained at the following link: *http://www.cdc.gov/niosh/topics/skin/skin-notation_profiles.html.*

FOR FURTHER INFORMATION CONTACT: Naomi Hudson, Dr. P.H., NIOSH, Education and Information Division (EID), Robert A. Taft Laboratories, 1090 Tusculum Ave. MS–C32, Cincinnati, OH 45226, email: *iuz8@cdc.gov.*

SUPPLEMENTARY INFORMATION: On May 1, 2015, NIOSH published a request for public review in the **Federal Register** [80 FR 24932] on skin notation profiles and technical documents. All comments received were reviewed and accepted where appropriate.

Dated: April 27, 2017.

Frank Hearl,

Chief of Staff, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

[FR Doc. 2017–08887 Filed 5–2–17; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Peer Review Meeting.

Date: June 1, 2017.

Time: 2:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Room 3F40, 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Robert C. Unfer, Ph.D., Scientific Review Officer, Scientific Review Program, DEA/NIAID/NIH/DHHS, 5601 Fishers Lane, Room 3F40 MSC 9823, Rockville, MD 20892–9823, 240–669–5035, *unferrc@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: April 28, 2017.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–08946 Filed 5–2–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Minority Health and Health Disparities; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Council on Minority Health and Health Disparities.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Minority Health and Health Disparities.

Date: June 5–6, 2017.

Closed: June 5, 2017, 3:00 p.m. to adjournment.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, 31 Center Drive, Building 31, 6th Floor, Conference Room 6, Bethesda, MD 20892.

Open: June 6, 2017, 8:00 a.m. to 2:30 p.m.

Agenda: The agenda will include opening remarks, administrative matters, Director's report, NIH Health Disparities update, and other business of the Council.

Place: National Institutes of Health, 31 Center Drive, Building 31, 6th Floor, Conference Room 6, Bethesda, MD 20892.

Contact Person: Dr. Joyce A. Hunter, Deputy Director, NIMHD, National Institutes of Health, National Institute on Minority Health and Heath Disparities, 6707 Democracy Blvd., Suite 800, Bethesda, MD 20892, (301) 402–1366, *hunterj@nih.gov.*

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxis, hotel, and airport shuttles, will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Dated: April 28, 2017.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–08939 Filed 5–2–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Initial Review Group; Mental Health Services Research Committee, SERV.

Date: May 31, 2017.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Dupont Hotel, 1500 New Hampshire Avenue NW., Washington, DC 20036.

Contact Person: Aileen Schulte, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH Neuroscience Center, 6001 Executive Blvd., Room 6136, MSC 9606, Bethesda, MD 20852, 301–443–1225, *aschulte@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: April 28, 2017.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–08937 Filed 5–2–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Microbiology, Infectious Diseases and AIDS Initial Review Group; Microbiology and Infectious Diseases Research Committee.

Date: May 30, 2017.

Time: 8:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Ritz-Carlton Hotel, 1150 22nd Street NW., Washington, DC 20037.

Contact Person: Frank S. De Silva, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, Room #3E72A, National Institutes of Health/NIAID, 5601 Fishers Lane, MSC 9834, Bethesda, MD 20892934, (240) 669–5023, *fdesilva@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: April 28, 2017.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–08947 Filed 5–2–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Mental Health Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Mental Health Council.

Date: May 25, 2017.

Open: 9:00 a.m. to 12:15 p.m.

Agenda: Presentation of the NIMH Director's Report and discussion of NIMH program.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Closed: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Contact Person: Jean G. Noronha, Ph.D., Director, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9609, Bethesda, MD 20892–9609, 301–443–3367, *jnoronha@mail.nih.gov*.

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *www.nimh.nih.gov/about/advisory-boards-and-groups/namhc/index.shtml.,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: April 28, 2017.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–08938 Filed 5–2–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Correction for Announcement of Requirements and Registration for ''Antimicrobial Resistance Rapid, Point-of-Need Diagnostic Test'' Challenge

The National Institutes of Health (NIH) is correcting a notice previously published in the **Federal Register** on September 8, 2016 (81 FR 62150), titled ''Announcement of Requirements and Registration for ''Antimicrobial Resistance Rapid, Point-of-Need Diagnostic Test'' Challenge.'' The notice announced the Antimicrobial Resistance Rapid, Point-of-Need challenge competition that may result in the awarding of $20 million dollars for the successful development of new, innovative, accurate, and cost-effective in vitro diagnostic tests that would rapidly inform clinical treatment decisions and be of significant clinical and public health utility to combat the development and spread of antibiotic resistant bacteria and improve antibiotic stewardship.

The NIH is correcting and clarifying several components of Step 2 of the Challenge competition including:

(1) The letter of intent must be submitted by August 3, 2018, at 11:59 p.m. ET, for all ''Solvers'' planning to submit for the Step 2 (Delivery of Prototype and Analytical Data) stage of the competition.

(2) The prototype in vitro diagnostic device is not to be provided with the submission. The September 8, 2016, announcement incorrectly stated that the device was to be included as part of the submission for Step 2.

(3) The Technical Evaluation Panel will use the following 4 criteria for evaluating the Step 2 submissions including: (a) Innovation; (b) clinical significance; (c) diagnostic performance and feasibility; and (d) sample matrix/setting and ease of use/throughput. These criteria were defined in the September 8, 2016, announcement; however, the announcement incorrectly stated that the Panel will evaluate the solutions based on eight criteria.

(4) A description sufficiently detailed and organized by sections for evaluation in the technical review and programmatic assessment of the proposed solution in 15 pages or less including the next 6 bullets, 8.5 x 11 inch page, 10-point or greater Arial, Palatino Linotype, or Georgia font and one inch margins including:

- A title of the proposed solution;
- A detailed description of the proposed in vitro diagnostic, and the development approach, challenges, and risks;
- One section addressing each of the 4 criteria listed above;
- One section providing a summary of the data, using the in vitro diagnostic device and the Standard Operating Procedures described in Appendix B, generated with either clinical or contrived samples compared to existing standard techniques demonstrating the performance characteristics (*e.g.,* limits of detection, sensitivity, specificity, and other characteristics that demonstrate test performance to support detection of biomarkers or analytes). The September 8, 2016, announcement incorrectly stated that diagnostic performance characteristics included positive predictive value and negative predictive value;
- Photographs of the in vitro diagnostic prototype device and a video not to exceed 5 minutes (in accordance with the NIH interim policy for submitting a video as NIH application materials *https://grants.nih.gov/grants/guide/notice-files/NOT-OD-12-141.html*) demonstrating the status of the development and actual use of the device in testing contrived or clinical specimens;
- Address the NIH Human Subjects Protections and Inclusion of Women, Children, and Minorities policies, as well as biohazards policies (*https://grants.nih.gov/grants/guide/notice-files/NOT-OD-15-078.html*), if applicable.

(5) An Appendix A, provide additional data and tables to support the data summary and performance claims based on the use of the proposed

solution testing clinical or contrived samples in 15 pages or less.

(6) An Appendix B with the standard operating procedures for the use of the solution submitted for Step 2 of the Challenge competition must be limited to 10 pages or less in length. If a longer Appendix is submitted, only the first 10 pages will be considered by the Technical Evaluation Panel and the Judging Panel.

(7) Submissions for Step 2 of the Challenge competition can be submitted to *http://www.cccinnovationcenter.com/challenges/antimicrobial-resistance-diagnostic-challenge/* beginning June 1, 2018. Submissions received after the deadline of September 4, 2018, at 11:59 p.m. ET will be disqualified and not evaluated by the Technical Evaluation Panel or Judging Panel.

(8) Solvers may submit corrections or additional materials in support of their Step 2 submissions so long as the NIH receives the materials by the deadline of September 4, 2018, at 11:59 p.m. ET. Corrections or additional materials for Step 2 will not be accepted or evaluated by the Technical Evaluation Panel or Judging Panel if they are received after September 4, 2018, at 11:59 p.m. ET.

(9) The NIH will perform an initial review of all submissions to ensure they are complete and within the scope of the Challenge competition. Submissions that are incomplete will be administratively disqualified and will not be evaluated by the Technical Evaluation Panel or the Judging Panel.

(10) A Solver may not be a federal employee of HHS (or any component of HHS) acting in their personal capacity.

(11) A Solver employed by a federal agency or entity other than HHS (or any component of HHS), should consult with an agency Ethics Official to determine whether the federal ethics rules will limit or prohibit the acceptance of a prize under this challenge.

(12) The NIH and Assistant Secretary for Preparedness and Response/Biomedical Advanced Research and Development Authority may determine that based on the number of submissions received for Step 2 that less competitive submissions will not be discussed by the Technical Evaluation Panel during the Panel's meeting.

(13) Members of the Technical Evaluation Panel for Step 1 are not eligible to participate in or contribute to any proposal for Step 2 and Step 3 of the Challenge competition.

(14) Any Solver is eligible for Step 2 of this Challenge competition. For example, if a Step 1 ''Solver'' was not identified as a semifinalist, he/she may still submit for Step 2 of this competition and those who did not submit a Step 1 proposal may still submit a proposal for Step 2.

(15) All submissions for Step 2 and 3 must be in English.

For further information about the Antimicrobial Resistance Diagnostic Challenge competition, please contact Robert W. Eisinger, Ph.D., NIH, 301–496–2229 or by email *Robert.eisinger@nih.gov.*

Dated: April 27, 2017.

Lawrence A. Tabak,

Deputy Director, National Institutes of Health.

[FR Doc. 2017–08920 Filed 5–2–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2007–0008]

National Advisory Council; Meeting

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Committee management; notice of Open Federal Advisory Committee meeting.

SUMMARY: The Federal Emergency Management Agency (FEMA) National Advisory Council (NAC) will meet in person on May 23–25, 2017 in Tampa, FL. The meeting will be open to the public.

DATES: The NAC will meet Tuesday, May 23, 2017 from 8:00 a.m. to 5:00 p.m., Wednesday, May 24, 2017 from 8:30 a.m. to 5:00 p.m., and Thursday, May 25, 2017 from 8:30 a.m. to 1:00 p.m. Eastern Daylight Time (EDT). Please note that the meeting may close early if the NAC has completed its business.

ADDRESSES: The meeting will be held at The Barrymore Hotel Tampa Riverwalk located at 111 W. Fortune St., Tampa, FL 33602. It is recommended that attendees register with FEMA prior to the meeting by providing your name, telephone number, email address, title, and organization to the person listed in **FOR FURTHER INFORMATION CONTACT** below.

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the person listed in **FOR FURTHER INFORMATION CONTACT** below as soon as possible.

To facilitate public participation, members of the public are invited to provide written comments on the issues to be considered by the NAC listed in the agenda. The ''Agenda'' section below outlines these issues. The full agenda and any related documents for this meeting will be posted by Friday, May 19 on the NAC Web site at *http://www.fema.gov/national-advisory-council.* Written comments must be submitted and received by 5:00 p.m. EDT on May 12, 2017, identified by Docket ID FEMA-2007–0008, and submitted by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: FEMA-RULES@fema.dhs.gov.* Include the docket number in the subject line of the message.
- *Fax:* (540) 504–2331. Please include a cover sheet addressing the fax to ATTN: Deana Platt.
- *Mail:* Regulatory Affairs Division, Office of Chief Counsel, FEMA, 500 C Street SW., Room 8NE, Washington, DC 20472–3100.

Instructions: All submissions received must include the words ''Federal Emergency Management Agency'' and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read comments received by the NAC, go to *http://www.regulations.gov,* and search for the Docket ID listed above.

A public comment period will be held on Wednesday, May 24 from 1:30 p.m. to 1:45 p.m. EDT. All speakers must limit their comments to 5 minutes. Comments should be addressed to the NAC. Any comments not related to the agenda topics will not be considered by the NAC. To register to make remarks during the public comment period, contact the individual listed in **FOR FURTHER INFORMATION CONTACT** by May 12, 2017. Please note that the public comment period may end before the time indicated, following the last call for comments.

FOR FURTHER INFORMATION CONTACT: Deana Platt, Designated Federal Officer, Office of the National Advisory Council, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472–3184, telephone (202) 646–2700, fax (540) 504–2331, and email *FEMA-NAC@fema.dhs.gov.* The NAC Web site is: *http://www.fema.gov/national-advisory-council.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. Appendix.

The NAC advises the FEMA Administrator on all aspects of emergency management. The NAC incorporates state, local, and tribal government, and private sector input in the development and revision of FEMA plans and strategies. The NAC includes a cross-section of officials, emergency managers, and emergency response providers from state, local, and tribal governments, the private sector, and nongovernmental organizations.

Agenda: On Tuesday, May 23, the NAC will hear about priorities across FEMA regions from the Region IV team and receive briefings on Federal Insurance and Mitigation as well as Protection and National Preparedness.

On Wednesday, May 24, the NAC will hear from the Office of Response and Recovery, and will engage in an open discussion with the Acting FEMA Administrator. The three NAC subcommittees (Federal Insurance and Mitigation Subcommittee, Preparedness and Protection Subcommittee, and Response and Recovery Subcommittee) and the GIS Ad Hoc Subcommittee will provide reports to the NAC about their work, whereupon the NAC will deliberate on any recommendations presented in the subcommittees' reports, and, if appropriate, vote on recommendations for the FEMA Administrator. Potential recommendation topics include (1) more effective use of technology in emergency management, (2) better incorporating access and functional needs and others with disabilities into emergency management training, (3) incorporating local mitigation investments into the state credit under the disaster deductible concept, and (4) better data standards, especially for geospatial data.

On Thursday, May 25, the NAC will review potential topics for research before the next in-person meeting, review agreed upon recommendations and confirm charges for the subcommittees, and receive a briefing on the National Incident Management System.

The full agenda and any related documents for this meeting will be posted by Friday, May 19 on the NAC Web site at *http://www.fema.gov/national-advisory-council.*

Robert J. Fenton,

Acting Administrator, Federal Emergency Management Agency.

[FR Doc. 2017–08917 Filed 5–2–17; 8:45 am]

BILLING CODE 9111–48–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[Docket No. ONRR–2012–0003; DS63600000 DR2000000.PMN000 178D0102R2]

30-day Extension of Nomination Period for the Royalty Policy Committee

AGENCY: Office of Natural Resources Revenue, Interior.

ACTION: Notice.

SUMMARY: On April 3, 2017, the U.S. Department of the Interior (DOI) published a notice establishing the Royalty Policy Committee (Committee) and requesting nominations and comments. This notice extends the nomination period end date by 30 additional days.

DATES: Nominations for the Committee must be submitted by June 2, 2017.

ADDRESSES: You may submit nominations by any of the following methods:

- *Mail or hand-carry nominations to:* Ms. Kim Oliver, Department of the Interior, Office of Natural Resources Revenue, 1849 C Street NW., MS 5134, Washington, DC 20240.
- *Email nominations to: Kimiko.oliver@onrr.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Judy Wilson, Office of Natural Resources Revenue; telephone (202) 208–4410; email: *judith.wilson@onrr.gov.*

SUPPLEMENTARY INFORMATION: The Committee is established under the authority of the Secretary of the Interior (Secretary) and regulated by the Federal Advisory Committee Act. The purpose of the Committee is to ensure that the public receives the full value of the natural resources produced from Federal lands. The duties of the Committee are solely advisory in nature.

The Committee will not exceed 28 members and will be composed of Federal and non-Federal members in order to ensure fair and balanced representation.

The Secretary will appoint non-Federal members in the following categories:

- Up to six members representing the Governors of States that receive more than $10,000,000 annually in royalty revenues from onshore and offshore Federal leases.
- Up to four members representing the Indian Tribes that are engaged in activities subject to laws relating to mineral development that is specific to one or more Indian Tribes.
- Up to six members representing various mineral and/or energy stakeholders in Federal and Indian royalty policy.
- Up to four members representing academia and public interest groups.

Nominations should include a resume providing an adequate description of the nominee's qualifications, including information that would enable DOI to make an informed decision regarding meeting the membership requirements of the Committee and to permit DOI to contact a potential member.

Public Disclosure of Comments: Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire nomination submission—including your personal identifying information—may be made publicly available at any time. While you can ask us in your submission to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 5 U.S.C. Appendix 2.

Dated: April 25, 2017.

Gregory J. Gould,

Director, Office of Natural Resources Revenue.

[FR Doc. 2017–08934 Filed 5–2–17; 8:45 am]

BILLING CODE 4335–30–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–23120; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Field Museum of Natural History, Chicago, IL; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

SUMMARY: The Field Museum of Natural History has corrected an inventory of human remains and associated funerary objects, published in a Notice of Inventory Completion in the **Federal Register** on August 3, 2010. This notice corrects the minimum number of individuals and the number of associated funerary objects. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the Field Museum of Natural History. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Field Museum of Natural History at the address in this notice by June 2, 2017.

ADDRESSES: Helen Robbins, Repatriation Director, Field Museum of Natural History, 1400 South Lake Shore Drive, Chicago, IL 60605–2496, telephone (312) 665–7317, email *hrobbins@fieldmuseum.org.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the correction of an inventory of human remains and associated funerary objects under the control of the Field Museum of Natural History. The human remains and associated funerary objects were removed from various locations on the Hopi Indian Reservation, Coconino and Navajo Counties, AZ.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

This notice corrects the minimum number of individuals and the number of associated funerary objects published in a Notice of Inventory Completion in the **Federal Register** (75 FR 45659–45660, August 3, 2010). Transfer of control of the items in this correction notice has not occurred.

Correction

In the **Federal Register** (75 FR 45659, August 3, 2010), column 3, paragraph 4, is corrected by substituting the following paragraph:

In 1900, human remains representing a minimum of 83 individuals were removed from Awatobi, Burned Corn House, Chukubi, Mishongnovi, Old Mishongnovi, Payupki, Kishuba, Shongopovi, Sikyatki, and First Mesa on the Hopi Indian Reservation, Coconino and Navajo County, AZ, by Charles L. Owen for the Field Museum of Natural History (Field Museum accession number 709). No known individuals were identified. The 65 associated funerary objects are 4 ceramic jars, 31 bowls, 5 pots, 11 ladles, 1 vase, 3 mugs, 2 beads, 1 figure, 1 lithic flake, 1 lot of paint, 1 piki stone, 1 colander, 1 shell ornament, and 2 vessels.

In the **Federal Register** (75 FR 45659, August 3, 2010), column 3, paragraph 5, is corrected by substituting the following paragraph:

In 1901, human remains representing a minimum of 204 individuals were removed from Old Walpi on the Hopi Indian Reservation, Coconino and Navajo County, AZ, by Charles L. Owen for the Field Museum of Natural History (Field Museum accession numbers 769, 780). No known individuals were identified. The 113 associated funerary objects are 25 ceramic jars, 22 bowls, 10 bahos, 7 ladles, 2 mugs, 2 stone images, 5 stone slabs, 1 bean, 2 vessels, 25 pots, 1 cup, 1 medicine bowl, 1 pitcher, 1 water vessel, 4 non-human remains, 2 pipes, 1 ear pendant, and 1 possible seed.

In the **Federal Register** (75 FR 54659, August 3, 2010) column 3, before paragraph 6, insert the following paragraph:

In 1900 or 1901, fragmentary human remains representing a minimum of 19 individuals were removed from unknown sites on the Hopi Indian Reservation, Coconino and Navajo County, AZ, by Charles L. Owen for the Field Museum of Natural History (Field Museum accession numbers 769, 780, and 709).

In the **Federal Register** (75 FR 45660, August 3, 2010) column 1, paragraph 1, sentence 1, is corrected by replacing the number ''251'' with the number ''306''.

In the **Federal Register** (75 FR 45660, August 3, 2010) column 1, paragraph 1, sentence 2, is corrected by replacing the number ''151'' with the number ''178''.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Helen Robbins, Repatriation Director, Field Museum of Natural History, 1400 South Lake Shore Drive, Chicago, IL 60605–2496, telephone (312) 665–7317, email *hrobbins@fieldmuseum.org,* by June 2, 2017. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Hopi Tribe of Arizona may proceed.

The Field Museum of Natural History is responsible for notifying the Hopi Tribe of Arizona that this notice has been published.

Dated: March 21, 2017.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2017–08873 Filed 5–2–17; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–23139; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Peabody Museum of Natural History, Yale University, New Haven, CT

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Peabody Museum of Natural History has completed an inventory of human remains, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and present-day Indian tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the Peabody Museum of Natural History. If no additional requestors come forward, transfer of control of the human remains to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the Peabody Museum of Natural History at the address in this notice by June 2, 2017.

ADDRESSES: Professor David Skelly, Director, Yale Peabody Museum of Natural History, P.O. Box 208118, New Haven, CT 06520–8118, telephone (203) 432–3752.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the Peabody Museum of Natural History, Yale University, New Haven, CT. The human remains were removed from multiple sites in the State of North Dakota.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National

Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Peabody Museum of Natural History professional staff in consultation with a representative of the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota (hereafter the ''Three Affiliated Tribes'').

History and Description of the Remains

In 1904, human remains representing, at minimum, one individual were removed from the On-A-Slant Village site (32-Mo-0026) in Morton County, ND, by a private individual. In 1915, the human remains were donated to the Peabody Museum of Natural History. The human remains represent one adult, probably male. No known individual was identified. No associated funerary objects are present.

Between 1903 and 1906, human remains representing, at minimum, one individual were removed from the Scattered Village site (32-Mo-0031) in Morton County, ND, by a private individual. In 1915, the human remains were donated to the Peabody Museum. The human remains represent one subadult 12–15 years old, sex indeterminate. No known individual was identified. No associated funerary objects are present.

Located near the mouth of the Heart River, On-A-Slant Village is recognized as a late prehistoric and protohistoric earth lodge village of the Mandan whose descendants are today members of the Three Affiliated Tribes. Scattered Village was a large prehistoric and historic settlement located on the north side of the Heart River on the eastern side of the modern city of Mandan, ND. The inhabitants of Scattered Village have been identified as either Hidatsa or Mandan whose descendants are today members of the Three Affiliated Tribes.

Determinations Made by the Peabody Museum of Natural History

Officials of the Peabody Museum of Natural History have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of two individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Professor David Skelly, Director, Yale Peabody Museum of Natural History, P.O. Box 208118, New Haven, CT 06520–8118, telephone (203) 432–3752, by June 2, 2017. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota may proceed.

The Peabody Museum of Natural History is responsible for notifying the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota that this notice has been published.

Dated: March 22, 2017.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2017–08875 Filed 5–2–17; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–23117: PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Human Remains Repository, Department of Anthropology, University of Wyoming, Laramie, WY

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Human Remains Repository, Department of Anthropology, University of Wyoming, has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and associated funerary objects and any present-day Indian tribes or Native Hawaiian organizations. Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the Human Remains Repository, Department of Anthropology, University of Wyoming. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the Indian tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Human Remains Repository, Department of Anthropology, University of Wyoming, at the address in this notice by June 2, 2017.

ADDRESSES: Dr. Rick L. Weathermon, Curator, Human Remains Repository, Department 3431, Anthropology, 1000 East University Avenue, University of Wyoming, Laramie, WY 82071, telephone (307) 314–2035, email *rikw@uwyo.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the Human Remains Repository, Department of Anthropology, University of Wyoming, Laramie, WY. The human remains and associated funerary objects were removed from multiple locations in multiple counties in Wyoming.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Human Remains Repository, Department of Anthropology, University of Wyoming, Laramie, WY, professional staff in consultation with representatives of the Arapaho Tribe of the Wind River Reservation, Wyoming. The following tribes were invited to consult but did not participate in consultation: Cheyenne and Arapaho Tribes, Oklahoma (previously listed as the Cheyenne-Arapaho Tribes of Oklahoma); and Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana.

History and Description of the Remains

In 1968, human remains representing, at minimum, one individual were removed from site 48AB6, located east of Laramie in Albany County, WY, near the City Springs wells, by members of the University of Wyoming Department of Anthropology. The human remains represent a Native American female 21–25 years old. No known individual was identified. The human remains and associated funerary objects are recorded together as HR006 in the Human Remains Repository records. Sediment samples from the grave area are also present. The 8 associated funerary objects include one lot of brass wire bracelet fragments; one lot of rusted metal fragments; one lot of blue glass seed trade beads; one lot of white glass seed trade beads; one lump of red ocher; one lot of small disintegrating leather fragments; one lot of debitage; and one lot of decaying wood fragments that may represent a grave cover or collapsed scaffold.

In 1974, human remains representing, at minimum, one individual were removed from the Bell Cave site (48AB304), located 18 miles north-northeast of Laramie in Albany County, WY, by members of the Wyoming State Archaeology Survey Office. The fragmentary human remains represent a Native American individual 21–24 years old, of undetermined sex. No known individual was identified. The human remains and associated funerary objects are recorded together as HR011 in the Human Remains Repository records. The 2 associated funerary objects include one lot of small blue and white glass seed trade beads and one lot of larger red, blue, and white lamp-wound glass trade beads.

In 1974, human remains representing, at minimum, two individuals, were removed from an unknown site, located southwest of Laramie, Albany County, WY, by members of the University of Wyoming Department of Anthropology. The fragmentary human remains represent two Native American adults, one male (HR021) and one female (HR022), each approximately 50 years old. No known individuals were identified. No associated funerary objects are present.

At an unknown date, human remains representing, at minimum, one individual, were removed from an unknown site, located near Rock River in Albany County, WY. They have been housed at the Human Remains Repository since the mid-1980s. The human remains (HR096), which represent a Native American male, 35–40 years old, were found covered with a red pigment, possibly ocher. No known individual was identified. No associated funerary objects are present.

In 1959, human remains representing, at minimum, one individual were removed from site 48AB5, located approximately three miles southwest of Laramie, Albany County, WY, by personnel of the Wyoming Archaeological Survey Office. The human remains (HR097) were initially taken to the Wyoming State Museum and, in 1983, they were transferred to the Human Remains Repository. The fragmentary human remains represent a Native American male over the age of 50. No known individual was identified. No associated funerary objects are present. Based on fluorine dating performed in the 1960s, the individual probably dates to the Late Plains Archaic (3,000–2,000 years before present).

In 1986, human remains representing, at minimum, one individual were removed from site 48AB458, located approximately 10 miles south-southwest of Laramie, Albany County, WY, by personnel of the Wyoming Archaeological Survey Office and the University of Wyoming Department of Anthropology. The fragmentary human remains (HR115) represent a Native American male 19–24 years old. No known individual was identified. The 9 associated funerary objects include nine shell beads.

In 1986, human remains representing, at minimum, one individual were removed from site 48AB459, located about three miles northeast of Woods Landing, Albany County, WY, by personnel of the Wyoming Archaeological Survey Office and the University of Wyoming Department of Anthropology. The site had been disturbed in 1984 by looters, who reportedly collected corner notched arrow points, bone beads, and a shell pendant from the site. The fragmentary human remains (HR136) represent a Native American female 50–69 years old. No known individual was identified. No associated funerary objects are present.

At some time in the 1960s, human remains representing, at minimum, one individual, were removed from an unknown site, located approximately 25 miles southwest of Laramie, Albany County, WY, near Jelm Mountain, by the landowner. The human remains (HR197) were given to the University of Wyoming Department of Anthropology in 1996. The fragmentary human remains represent a Native American child between the ages of two and three. No known individual was identified. The 4 associated funerary objects include one lot of black, blue, white and red glass seed trade beads; one lot of white lamp-wound glass trade beads; one large abalone shell pendant; and one small abalone shell pendant.

At an unknown date, human remains representing, at minimum, one individual were removed from site 48AB458, located approximately 24 miles north-northeast of Laramie, Albany County, WY. In 2010, the human remains were recovered by law enforcement from the individual who had excavated them illegally. The human remains (HR318) were released to the Human Remains Repository in 2016. The fragmentary human remains represent a Native American male approximately 45 years old. No known individual was identified. No associated funerary objects are present. Additional remains belonging to the individual were later recovered by personnel of the Albany County Coroner's Office and the University of Wyoming Anthropology Department and the presence of other Native American graves in the vicinity was noted.

At an unknown date, human remains representing, at minimum, one individual were removed from site 48CR105, located southeast of Saratoga, Carbon County, WY. The individuals who removed the human remains also reported finding glass trade beads and projectile points at the site. In approximately 1978, the human remains (HR009) were given to the Human Remains Repository. The fragmentary human remains represent a Native American male over the age of 50. No known individual was identified. No associated funerary objects are present.

In 1977, human remains representing, at minimum, one individual were removed from site 48CR933, located approximately 16 miles northeast of Sinclair, Carbon County, WY, by the Office of the Wyoming State Archaeologist and relatives of the landowner. The human remains (HR057), within a bundle burial, were given to the Human Remains Repository by the landowner in 2004. The fragmentary human remains represent a Native American female over the age of 24. No known individual was identified. The 2 associated funerary objects include one lot of debitage and one lot of bone beads and bone bead fragments.

Between 1960 and 1980, human remains representing, at minimum, one individual were removed from an unknown site, located near the town of McFadden, Carbon County, WY. The human remains (HR133) were given to the Human Remains Repository in 1986. The fragmentary human remains represent a Native American male 24–35

years old. No known individual was identified. No associated funerary objects are present.

In 1994, human remains representing, at minimum, one individual were removed from site 48CR5718, located approximately 10.5 miles northwest of the town of Medicine Bow, Carbon County, WY, by personnel of the Office of the Wyoming State Archaeologist and the University of Wyoming Department of Anthropology. The human remains (HR213) have been housed at the Human Remains Repository since that time. The fragmentary human remains represent a Native American male 45–55 years old. No known individual was identified. No associated funerary objects are present.

In 2012, human remains representing, at minimum, one individual were removed from an unknown site, located approximately three miles northwest of the town of Sinclair, Carbon County, WY, by the Carbon County Coroner's Office and the University of Wyoming Department of Anthropology. The human remains, probably belonging to a secondary bundle burial under a small cairn, washed out of the site where they had been interred when a flash flood caused an arroyo wall to collapse. The human remains (HR319) have been housed at the Human Remains Repository since that time. The fragmentary human remains represent a Native American male approximately 50 years old. No known individual was identified. No associated funerary objects are present.

In 1986, human remains representing, at minimum, one individual were removed from site 8CO1829, located approximately 11 miles due south of Douglas, Converse County, WY. The human remains and associated funerary objects were given to the Pioneer Museum in Douglas, which transferred them to the Human Remains Repository in 1992. The fragmentary human remains (HR188) represent a Native American female 30–40 years old. No known individual was identified. The 83 funerary objects include 1 lot of thousands of blue, white, black, light yellow and red-white heart glass trade seed beads; 2 blue glass pony beads; 20 white opaque lamp-wound glass beads; 4 shell beads and shell fragments; 2 gilded metal buttons; 1 broken glass bottle stopper; 4 spring-like coils of brass or copper wire; 19 brass or copper wire bracelets; 1 metal circular trade mirror back; 3 drilled and incised deer/antelope phalanges; 4 elk canine teeth; 1 fragmentary bison tooth; 3 baculite 'buffalo stone' fossils; 1 elk horn hide scraper with metal bit; 1 abalone shell pendant; 3 fragmentary metal knife blades; 1 complete metal knife without scales; 1 metal arrow point; 1 metal bridle buckle; 1 metal bridle ring; 1 brass tube; 1 brass decorative metal piece; 1 bone spatula; 2 flat hide burnishing stones; 1 metaquartzite hammer stone; 1 small ball-shaped stone; 1 lot broken bifaces and debitage; and 1 small lot of red, yellow, white, and black ocher.

In 1974, human remains representing, at minimum, one individual were removed from site 48PL57, near the community of Shawnee in Platte County, WY, by personnel of the University of Wyoming Department of Anthropology. The human remains were at the Glendo Museum until 1996, when they were transferred to the Human Remains Repository. The fragmentary human remains (FC005) represent a Native American female 60–70 years old. No known individual was identified. No associated funerary objects are present.

In the 1930s, human remains representing, at minimum, one individual were removed from site 48GO6, located on the south side of the North Platte River near the town of Lingle, Goshen County, WY. At that time, some of the remains of the individual were sent to the Wyoming State Museum, and the remainder were sent to the University of Wyoming Geology Department. In 1963, the Geology Department sent the remains of the individual under its control to the Anthropology Department and, in 1996, the Wyoming State Museum transferred the remains of the individual under its control to the Human Remains Repository. In 2006, the remains of the individual were reunited. The fragmentary human remains (HR004) represent a Native American female 16–24 years old. No known individual was identified. The 15 funerary objects include 1 lot of blue, turquoise, red, white, green and red-white heart glass trade seed beads; 1 lot of olivella shell beads; 1 lot of dentalia shell beads; 2 abalone shell fragments; 1 glass button; 1 lot of fabric and leather fragments; 1 lot of wood fragments; 1 iron buckle; 1 lot of rusted iron fragments; 2 black leather strap fragments; 1 lot of wire bracelets and bracelet fragments; 1 lot of copper or brass plate fragments; and 1 of lot brass buttons.

In the 1970s, human remains representing, at minimum, one individual were removed from a crevasse burial site located approximately one half mile southeast of Crimson Dawn Butte on Casper Mountain, Natrona County, WY, by personnel of the Wyoming Archaeological Society. The human remains were transferred to the Human Remains Repository in the 1980s. The fragmentary human remains (HR200) represent a Native American female approximately 50 years old. No known individual was identified. The 2 funerary objects include 1 lot of slate heishi-style beads and 1 lot of bone beads.

In 1972 or 1973, human remains representing, at minimum, one individual were removed from an unknown site located on the south side of the North Platte River in Natrona County, WY, by personnel of the Natrona County Sheriff's Office. The human remains (FC002) were transferred to the University of Wyoming Anthropology Department Human Remains Repository in 1973. The human remains represent a Native American male 40–50 years old. No known individual was identified. No associated funerary objects are present.

In 1978 or 1979, human remains representing, at minimum, one individual were removed from site 48PL66, located approximately one half mile east of Gray Rocks Reservoir in Platte County, WY, by personnel of the Wyoming State Archaeologist's Office. The fragmentary human remains were transferred to the Human Remains Repository in the early 1980s. The fragmentary human remains represent a Native American male adult of indeterminate age. No known individual was identified. No associated funerary objects are present.

In the 1920s, human remains representing, at minimum, one individual were removed from a cairn site located on the south side of the Platte River in Platte or Converse County, WY. The human remains (HR139) were housed at the Wyoming State Museum and, in 1992, were transferred to the Human Remains Repository. The human remains represent a Native American female 2.5 to 3.5 years old. No known individual was identified. The 1 funerary object includes one cotton print dress with a beaded neckline of white glass trade seed beads.

In 1985, human remains representing, at minimum, one individual were removed from a rock shelter located on the North Platte River in Platte County, WY, by personnel of the University of Wyoming Department of Anthropology. The fragmentary human remains (FC071) represent a Native American female approximately 50 years old. No known individual was identified. No associated funerary objects are present.

At an unknown date, human remains representing, at minimum, one individual were removed from an

unknown location near Castle Rock in Platte County, WY. The human remains (HR216) were transferred to the Human Remains Repository in the late 1980s. The human remains represent a Native American adult of indeterminate sex. No known individual was identified. No associated funerary objects are present.

In the 1930s, human remains representing, at minimum, four individuals were removed from an unknown location near Torrington, Goshen County, WY. The human remains were given to the North Platte Police Department in Nebraska in 1994. The human remains were transferred to the Human Remains Repository in 1995 by the Lincoln County, NE., Coroner's office. The fragmentary human remains represent a Native American female 28–35 years old (DB145a); a Native American male, 28–35 years old (DB145b); a Native American child of indeterminate sex 3.5–6.5 years old (DB145c); and a Native American adult of indeterminate sex and age (DB145d). No known individuals were identified. No associated funerary objects are present.

Determinations Made by the Human Remains Repository, Department of Anthropology, University of Wyoming

Officials of the Human Remains Repository, Department of Anthropology, University of Wyoming have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on features of the skeletal elements or their archeological contexts.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 28 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 126 funerary objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and associated funerary objects and any present-day Indian tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of the Arapaho Tribe of the Wind River Reservation, Wyoming.
- Treaties, Acts of Congress, or Executive Orders, indicate that the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of the Arapaho Tribe of the Wind River Reservation, Wyoming.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains and associated funerary objects may be to the Arapaho Tribe of the Wind River Reservation, Wyoming.

Additional Requestors and Disposition

Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Dr. Rick L. Weathermon, Curator, Human Remains Repository, Department 3431, Anthropology, 1000 East University Avenue, University of Wyoming, Laramie, WY 82071, telephone (307) 314–2035, email *rikw@uwyo.edu,* by June 2, 2017. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Arapaho Tribe of the Wind River Reservation, Wyoming, may proceed.

The Human Remains Repository, Department of Anthropology, University of Wyoming, is responsible for notifying the Arapaho Tribe of the Wind River Reservation, Wyoming, that this notice has been published.

Dated: March 20, 2017.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2017–08868 Filed 5–2–17; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–23159; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: Robert S. Peabody Museum of Archaeology, Phillips Academy, Andover, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Robert S. Peabody Museum of Archaeology, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, has determined that the cultural items listed in this notice meet the definition of sacred objects. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request to the Robert S. Peabody Museum of Archaeology. If no additional claimants come forward, transfer of control of the cultural items to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to the Robert S. Peabody Museum of Archaeology at the address in this notice by June 2, 2017.

ADDRESSES: Dr. Ryan J. Wheeler, Director, The Robert S. Peabody Museum of Archaeology, Phillips Academy, 180 Main Street, Andover, MA 01810, (978) 749–4494, email *rwheeler@andover.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of the Robert S. Peabody Museum of Archaeology, Andover, MA, that meet the definition of sacred objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Items

About August 1909, seven items of cultural and spiritual significance were removed from the White Earth Reservation in Becker County, MN, by Warren K. Moorehead, Curator of the Robert S. Peabody Museum of Archaeology. The seven sacred objects are one owl feather war flag (144/18739) made by Ne-gah-ne-bin-ace in the mid-nineteenth century and presented to Moorehead by Me-shuck-ke-gee-shig and Mah-in-gonce; one beaded altar cloth (144/18737); one circular soapstone pipe and associated wooden stem (42293) that had been smoked by Way-ge-chaw-bow-e-quay; two beaded buckskin bags (144/18722 and 144/18721); and one pipe stem with pileated woodpecker skull and feathers (144/

18729) and one associated inlaid stone pipe (97/7326) that was obtained from Kah-gondaush (also known as George Walters).

On an unknown date, two cultural items were removed from the White Earth Reservation in Becker County, MN, by Major John R. Howard, Bureau of Indian Affairs Superintendent at the White Earth Agency from 1908 to 1916, and given to Warren K. Moorehead. The two sacred objects are one large granite pipe and associated long wooden stem (object ID number 29661) that had been made and smoked by Bay-bah-daum-ay-aush in 1898; and one small effigy pipe (object ID number 29662) belonging to No-de-na-qua-um (also known as Temperance Chief).

In 1908, President Theodore Roosevelt appointed Warren K. Moorehead to the Board of Indian Commissioners. After his appointment, Moorehead learned from his colleagues at the Smithsonian Institution ''of the dreadful situation on a dozen different reservations,'' including the White Earth Reservation. He requested permission and funds to investigate, which were granted by Commissioner of Indian Affairs Francis Leupp. Moorehead spent time at the White Earth Reservation investigating various forms of land and other theft during a period of significant economic, cultural, and religious oppression. It was during this time that numerous objects of cultural and spiritual significance were removed from Anishinaabeg communities.

Consultations were held during a January 12–13, 2017, visit by officials from the White Earth Band of the Minnesota Chippewa Tribe who affirmed cultural affiliation to these nine sacred objects. In a letter dated February 14, 2017, the White Earth Band of the Minnesota Chippewa Tribe requested the return of the nine sacred objects due to their substantial cultural and religious significance.

Determinations Made by the Robert S. Peabody Museum of Archaeology

Officials of the Robert S. Peabody Museum of Archaeology have determined that*:*

- Pursuant to 25 U.S.C. 3001(3)(C), the nine cultural items described above are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the nine sacred objects and the White Earth Band of the Minnesota Chippewa Tribe.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to Dr. Ryan J. Wheeler, Director, The Robert S. Peabody Museum of Archaeology, Phillips Academy, 180 Main Street, Andover, MA 01810, (978) 749–4494, email *rwheeler@andover.edu,* by June 2, 2017. After that date, if no additional claimants have come forward, transfer of control of the sacred object to the White Earth Band of the Minnesota Chippewa Tribe may proceed.

The Robert S. Peabody Museum of Archaeology is responsible for notifying the White Earth Band of the Minnesota Chippewa Tribe that this notice has been published.

Dated: March 27, 2017.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2017–08879 Filed 5–2–17; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–23041;PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: Worcester Society of Natural History d.b.a. EcoTarium, Worcester, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Worcester Society of Natural History d.b.a. EcoTarium, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, has determined that the cultural items listed in this notice meet the definition of sacred objects. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request to the Worcester Society of Natural History d.b.a. EcoTarium. If no additional claimants come forward, transfer of control of the cultural items to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to the Worcester Society of Natural History d.b.a. EcoTarium at the address in this notice by June 2, 2017.

ADDRESSES: Shana Hawrylchak, Manager of Exhibits and Collections, EcoTarium, 222 Harrington Way, Worcester, MA 01604, telephone (508) 929–2733, email *shawrylchak@ecotarium.org.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of the Worcester Society of Natural History d.b.a. EcoTarium, Worcester, MA, that meet the definition of sacred objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Item(s)

At an unknown date, one cultural item was removed from an unknown location. The one sacred object is a fan made of eagle feathers, hide, and small beadwork. In 2016, the fan was found in the collections storage facilities of the EcoTarium together with an associated exhibit label which read ''Fan used in the peyote ceremony''. No information on the fan was found in the Museum's accession files or internal archives indicating either the provenience or the provenance of the fan. Based on the age of other materials in the Museum's anthropology collection, it is likely that the fan entered the collection in the 1950s. In the opinion of Douglas Diehl, Director of American Indian & Ethnographic Art at Skinner Auction House, the piece was Kiowa or Comanche, based on the design.

In consultation with Margaret Murrow, Tribal Historic Preservation Officer for the Comanche Nation, further details of the design were identified as being in the Comanche style. In particular, the feathers were cut, or ''narrowed'', in a manner that is similar to traditional Comanche treatment of feathers and distinct from the fuller feather treatments seen in most Kiowa fans. The beadwork also follows traditional Comanche color schemes and patterns.

Determinations Made by the Worcester Society of Natural History d.b.a. EcoTarium

Officials of the Worcester Society of Natural History d.b.a. EcoTarium have determined that:

• Pursuant to 25 U.S.C. 3001(3)(C), the one cultural item described above is a specific ceremonial object needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to Shana Hawrylchak, Manager of Exhibits and Collections, EcoTarium, 222 Harrington Way, Worcester, MA 01604, telephone (508) 929–2733, email *shawrylchak@ecotarium.org,* by June 2, 2017. After that date, if no additional claimants have come forward, transfer of control of the sacred object to the Comanche Nation, Oklahoma, may proceed.

The Worcester Society of Natural History d.b.a. EcoTarium is responsible for notifying the Comanche Nation, Oklahoma, that this notice has been published.

Dated: March 7, 2017.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2017–08866 Filed 5–2–17; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–23110; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Office of the State Archaeologist, University of Iowa, Iowa City, IA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Office of the State Archaeologist Bioarchaeology Program, previously listed as the Office of the State Archaeologist Burials Program, has completed an inventory of human remains, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and present-day Indian tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the Office of the State Archaeologist Bioarchaeology Program. If no additional requestors come forward, transfer of control of the human remains to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the Office of the State Archaeologist Bioarchaeology Program at the address in this notice by June 2, 2017.

ADDRESSES: Dr. Lara Noldner, Office of the State Archaeologist Bioarchaeology Program, University of Iowa, 700 South Clinton Street, Iowa City, IA 52242, telephone (319) 384–0740, email *lara-noldner@uiowa.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the Office of the State Archaeologist Bioarchaeology Program, Iowa City, IA. The human remains were removed from the Blood Run site (13LO2), Lyon County, IA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Office of the State Archaeologist Bioarchaeology Program professional staff in consultation with representatives of the Ho-Chunk Nation of Wisconsin; Iowa Tribe of Kansas and Nebraska; Iowa Tribe of Oklahoma; Omaha Tribe of Nebraska; Otoe-Missouria Tribe of Indians, Oklahoma; Ponca Tribe of Indians of Oklahoma; Ponca Tribe of Nebraska; and Winnebago Tribe of Nebraska, (hereafter, ''The Tribes'').

History and Description of the Remains

At an unknown date, human remains representing, at minimum, six individuals were removed from the Blood Run site (13LO2), in Lyon County, IA. The human remains were part of the Amy Harvey collection. Amy Harvey collected Oneota materials while doing doctoral research at the University of Wisconsin-Madison in the early 1960s, and retained the materials when she began teaching at Stephens College in Columbia, MO, in 1965. The human remains were transferred to the Office of the State Archaeologist Bioarchaeology Program in 2010 and 2013 (Burial Project 3102). The human remains represent one adult of indeterminate age and sex; and five subadults of indeterminate sex, as follows: One child two years old, one child 2.5 to 3.5 years old, one child 3.5 to 4.5 years old, one child 5.0 to 6.5 years old, and one child 7 to 15 years old. No known individuals were identified. No associated funerary objects are present.

The Blood Run site (13LO2) is a large Oneota tradition village located in Iowa and South Dakota, straddling the Big Sioux River southeast of Sioux Falls, SD. Archeological evidence, including radiocarbon dates and trade artifacts, suggests that the site was occupied from A.D. 1500 to 1700. Tribal histories, supported by French historical maps and documents, suggest that the Omaha, Ponca, Iowa, and Oto tribes were present in the area at that time and were the probable residents of the site. The Ho-Chunk and Winnebago are also ethno-historically linked to these tribes. Based on this contextual information, it has been determined that there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and The Tribes.

Determinations Made by the Office of the State Archaeologist Bioarchaeology Program

Officials of the Office of the State Archaeologist Bioarchaeology Program have determined that:

• Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of six individuals of Native American ancestry.

• Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and The Tribes.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian

organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Lara Noldner, Office of the State Archaeologist Bioarchaeology Program, University of Iowa, 700 South Clinton Street, Iowa City, IA 52242, telephone (319) 384–0740, email *lara-noldner@uiowa.edu,* by June 2, 2017. After that date, if no additional requestors have come forward, transfer of control of the human remains to The Tribes may proceed.

The Office of the State Archaeologist Bioarchaeology Program is responsible for notifying The Tribes that this notice has been published.

Dated: March 17, 2017.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2017–08871 Filed 5–2–17; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–23026; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Nebraska State Historical Society, Lincoln, NE

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Nebraska State Historical Society (NSHS) has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and associated funerary objects and any present-day Indian tribes or Native Hawaiian organizations. Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the NSHS. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the Indian tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the NSHS at the address in this notice by June 2, 2017.

ADDRESSES: Rob Bozell, Nebraska State Historical Society, P.O. Box 82554, Lincoln, NE 68501, telephone (402) 471–4789, email *rob.bozell@nebraska.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the NSHS, Lincoln, NE. The human remains and associated funerary objects were removed from Custer and Franklin Counties, NE.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains and associated funerary objects was made by the NSHS professional staff in consultation with representatives of: The Arapaho Tribe of the Wind River Reservation, Wyoming; Iowa Tribe of Kansas and Nebraska; Kiowa Indian Tribe of Oklahoma; Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana; Pawnee Nation of Oklahoma; and Ponca Tribe of Nebraska.

History and Description of the Remains

On an unknown date, human remains representing, at minimum, one individual were removed from a ranch in rural Custer County, NE. On July 1, 2014, the human remains were donated to the NSHS by the private individual who had initially removed them. The human remains include the partial cranium and ten post-cranial bones of an individual of Native American ancestry. No known individual was identified. No associated funerary objects are present.

On October 28, 2014, human remains representing, at minimum, one individual were removed from a private yard in the City of Broken Bow in Custer County, NE. The human remains were given to the City of Broken Bow Police Department and subsequently donated to the NSHS. The human remains include the partial cranium of an individual of possible Native American ancestry. No known individual was identified. No associated funerary objects are present.

On October 1, 2014, human remains representing, at minimum, one individual were removed from an abandoned building in Custer County, NE. The human remains were given to the Custer County Sheriff's Office and subsequently donated to the NSHS. The human remains include the cranium of an individual of Native American ancestry and 13 post-cranial bones. No known individual was identified. The 13 associated funerary objects are: One metal button, one metal ring, one metal hook or flint steel, one animal bone, five flint flakes, one chalky concretion, two glass trade beads, and one mussel shell.

Between November 5 and 7, 2014, human remains representing, at minimum, one adult individual were removed from a steep slope in Franklin County, NE, by the NSHS. The human remains were discovered eroding from the slope by an archeological survey crew. The human remains include: Two femora (l/r), two tibiae (l/r), two fibulae (l/r), one pelvis (l), two humeri (l/r), one radius (l), one ulna (l), one 5th metacarpal (r), several fragments of vertebrae, and several fragments of unidentifiable long bones. The human remains were those of an individual of Native American ancestry. No known individuals were identified. No associated funerary objects are present.

Determinations Made by the Nebraska State Historical Society

Officials of the Nebraska State Historical Society have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on associated funerary objects and examination by a physical anthropologist of cranial, dental, and femoral features and measurements.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of four individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 13 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and associated funerary objects and any present-day Indian tribe.

• According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of the Pawnee Nation of Oklahoma.

• Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains and associated funerary objects may be to the Pawnee Nation of Oklahoma.

Additional Requestors and Disposition

Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Rob Bozell, Nebraska State Historical Society, P.O. Box 82554, Lincoln, NE 68501, (402) 471–4789, email *rob.bozell@nebraska.gov,* by June 2, 2017. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Pawnee Nation of Oklahoma may proceed.

The Nebraska State Historical Society is responsible for notifying the Arapaho Tribe of the Wind River Reservation, Wyoming; Iowa Tribe of Kansas and Nebraska; Kiowa Indian Tribe of Oklahoma; Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana; Pawnee Nation of Oklahoma; and Ponca Tribe of Nebraska that this notice has been published.

Dated: March 3, 2017.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2017–08861 Filed 5–2–17; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–23151; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: Placer County Museums, Auburn, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Placer County Museums, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, has determined that the cultural items listed in this notice meet the definition of objects of cultural patrimony. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request to the Placer County Museums. If no additional claimants come forward, transfer of control of the cultural items to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to the Placer County Museums at the address in this notice by June 2, 2017.

ADDRESSES: Ralph Gibson, Museums Administrator, Placer County Museums, 101 Maple Street, Auburn, CA 95603, telephone (530) 889–6500, email *RGibson@placer.ca.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of the Placer County Museums, Auburn, CA, that meet the definition of objects of cultural patrimony under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Items

At an unknown date, one cultural item was removed from an unknown location and donated to the Placer County Museums by Guy L. Gilchrist of Dutch Flat, CA, in 1949. It is unclear where he acquired the object. The one object of cultural patrimony is a water jar.

At an unknown date, two cultural items were removed from an unknown location and donated to the Placer County Museums by Maude E. Denney of Roseville, CA, in 1949. It is unclear where she acquired the objects. The two objects of cultural patrimony are a water jar and a winnowing tray,

At an unknown date, six cultural items were removed from an unknown location and donated to the Placer County Museums by Berenice Pate of Auburn, CA, in 1986. Pate's husband, Waldo Pate, was a physician who treated local Indians. He often received baskets as payment for medical services and the couple continued collecting through purchases and gifts. In the 1960s, Berenice Pate served as the executive director of the California Indian Commission. A large part of their collection was acquired in Modoc County, CA. The six objects of cultural patrimony are four water jars, one parching tray, and one burden basket.

The tribe affiliation was determined by Foley C. Benson, M. A, A. S.A. Certified Appraiser, and Norman Wilson, Museum Consultant. The affiliation was confirmed through consultation with the Reno-Sparks Indian Colony, Nevada, who recognized methods and materials used in the construction of the items that were consistent with traditional Paiute weavings.

Determinations Made by the Placer County Museums

Officials of the Placer County Museums have determined that*:*

• Pursuant to 25 U.S.C. 3001(3)(D), the 9 cultural items described above have ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual.

• Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the objects of cultural patrimony and the Reno-Sparks Indian Colony, Nevada.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to Ralph Gibson, Placer County Museums, 101 Maple Street, Auburn, CA 95603, telephone (530) 889–6500, email *RGibson@placer.ca.gov,* by June 2, 2017. After that date, if no additional claimants have come forward, transfer of control of the objects of cultural patrimony to Reno-Sparks Indian Colony, Nevada, may proceed.

The Placer County Museums is responsible for notifying the Reno-Sparks Indian Colony, Nevada, Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California, United Auburn Indian Community of the Auburn Rancheria of California, Washoe Tribe of Nevada & California (Carson Colony, Dresslerville Colony, Woodfords Community, Stewart Community & Washoe Ranches), and Wilton Rancheria, California, that this notice has been published.

Dated: March 23, 2017.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2017–08878 Filed 5–2–17; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–23134; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Tennessee Department of Environment and Conservation, Division of Archaeology, Nashville, TN

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Tennessee Department of Environment and Conservation, Division of Archaeology, has completed an inventory of human remains and associated funerary objects in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the Tennessee Department of Environment and Conservation, Division of Archaeology. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Tennessee Department of Environment and Conservation, Division of Archaeology, at the address in this notice by June 2, 2017.

ADDRESSES: Tennessee Department of Environment and Conservation, Division of Archaeology, Michael C. Moore, 1216 Foster Avenue, Cole Bldg 3, Nashville, TN 37243, telephone 615–741–1588, ext. 109, email *mike.c.moore@tn.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the Tennessee Department of Environment and Conservation, Division of Archaeology, Nashville, TN. The human remains and associated funerary objects were removed from Elizabethton, Carter County, TN.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Tennessee Department of Environment and Conservation, Division of Archaeology, professional staff in consultation with representatives of the Eastern Band of Cherokee Indians.

History and Description of the Remains

In 1977, human remains representing, at minimum, one individual were removed from the Carter Mansion site (40CR5) in Carter County, TN, by personnel of the Tennessee Division of Archaeology. The Carter Mansion site in Elizabethton, TN, is comprised of the late 18th century home and grounds of John and Landon Carter. Archeological investigations conducted during the 1970s by the Tennessee Division of Archaeology (TDOA) revealed prehistoric and protohistoric Native American components near the structure and along the grounds. The TDOA discovered the human remains and associated funerary objects during a structure restoration project (Smith 1979). During the course of excavation along the front exterior of the house, a burial pit containing the human remains was encountered immediately adjacent to the foundation base. The human remains and associated funerary objects have been curated by the TDOA since excavation. The human remains represent an adult male approximately 20–30 years old. No known individual was identified. Based on analysis of the associated funerary objects, the human remains were considered to be of a protohistoric Native American component. The 580 associated funerary objects are 381 marine gastropod beads; 164 marginella shell beads; 1 leptoxis shell bead; 5 bone beads; 2 Busycon shell ear pins; 2 split turkey bone pins; 15 Busycon shell beads; 1 pounded copper sheet; 1 fragmented woven bark matting (for copper sheet); 1 ceramic platter/bowl with rim notching on one side; 1 miniature incised ceramic vessel; 1 basal portion of an incised ceramic vessel; 1 smooth stone; 3 lithic debitage; and 1 pumpkin seed. The associated funerary objects are protohistoric to early historic Native American based upon the range and style of artifacts.

Determinations Made by the Tennessee Department of Environment and Conservation, Division of Archaeology

Officials of the Tennessee Department of Environment and Conservation, Division of Archaeology have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 580 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and Eastern Band of Cherokee Indians.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Michael C. Moore, Tennessee Department of Environment and Conservation, Division of Archaeology, 1216 Foster Avenue, Cole Bldg 3, Nashville, TN 37243, telephone 615–741–1588, ext. 109, email *mike.c.moore@tn.gov,* by June 2, 2017. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Eastern Band of Cherokee Indians may proceed.

The Tennessee Department of Environment and Conservation, Division of Archaeology is responsible for notifying the Eastern Band of Cherokee Indians that this notice has been published.

Dated: March 22, 2017.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2017–08870 Filed 5–2–17; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–23012; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Tennessee Valley Authority, Knoxville, TN; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

SUMMARY: The Tennessee Valley Authority (TVA) has corrected an inventory of human remains published in a Notice of Inventory Completion in the **Federal Register** on September 1, 2016. This notice corrects the minimum number of individuals. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the TVA. If no additional requestors come forward, transfer of control of the human remains to the Indian tribe stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to at the address in this notice by June 2, 2017.

ADDRESSES: Dr. Thomas O. Maher, TVA, 400 West Summit Hill Drive, WT11D, Knoxville, TN 37902–1401, telephone (865) 632–7458, email *tomaher@tva.gov*.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the correction of an inventory of human remains under the control of the TVA, Knoxville, TN. The human remains were removed from the Long Branch site (1LU67) in Lauderdale County, AL.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

This notice corrects the minimum number of individuals published in a Notice of Inventory Completion in the **Federal Register** (81 FR 60377–60380, September 1, 2016). Additional human remains from these sites were discovered during the reorganization of a storage area. Transfer of control of the items in this correction notice has not occurred.

Correction

In the **Federal Register** (81 FR 60379, September 1, 2016), column 1, paragraph 2, sentence 1, under the heading ''History and Description of the Remains,'' is corrected by replacing the number ''109'' with the number ''111''.

In the **Federal Register** (81 FR 60379, September 1, 2016), column 3, paragraph 2, sentence 1, under the heading ''Determinations Made by the Tennessee Valley Authority,'' is corrected by replacing the number ''345'' with the number ''347''.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Dr. Thomas O. Maher, TVA, 400 West Summit Hill Drive, WT11D, Knoxville, TN 37902–1401, telephone (865) 632–7458, email *tomaher@tva.gov,* by June 2, 2017. After that date, if no additional requestors have come forward, transfer of control of the human remains to The Chickasaw Nation may proceed.

TVA is responsible for notifying the Alabama-Coushatta Tribe of Texas (previously listed as the Alabama-Coushatta Tribes of Texas); Alabama-Quassarte Tribal Town; Cherokee Nation; Coushatta Tribe of Louisiana; Eastern Band of Cherokee Indians; Eastern Shawnee Tribe of Oklahoma; Poarch Band of Creeks (previously listed as the Poarch Band of Creek Indians of Alabama); The Chickasaw Nation; The Choctaw Nation of Oklahoma; The Muscogee (Creek) Nation; Thlopthlocco Tribal Town; and United Keetoowah Band of Cherokee Indians in Oklahoma that this notice has been published.

Dated: March 1, 2017.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2017–08862 Filed 5–2–17; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–23140; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: Peabody Museum of Natural History, Yale University, New Haven, CT

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Peabody Museum of Natural History, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, has determined that the cultural item listed in this notice meets the definition of unassociated funerary object. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim this cultural item should submit a written request to the Peabody Museum of Natural History. If no additional claimants come forward, transfer of control of the cultural item to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim this cultural item should submit a written request with information in support of the claim to the Peabody Museum of Natural History at the address in this notice by June 2, 2017.

ADDRESSES: Professor David Skelly, Director, Yale Peabody Museum of Natural History, P.O. Box 208118, New Haven, CT 06520–8118, telephone (203) 432–3752.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate a cultural item under the control of the Peabody Museum of Natural History, Yale University, New Haven, CT, that meets the definition of unassociated funerary object under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Item

In 1904, one cultural item was removed from a grave near Fort Clark, Mercer County, ND, and donated to the Peabody Museum of Natural History in 1915. The one unassociated funerary object is a swan bone whistle.

Museum documentation identifies the provenience as an Arikara grave near Fort Clark, ND. In 1830, the Fort Clark Trading Post was established in an area south of a Mandan village by James Kipp, an employee of the American Fur Company. The Mandan occupied the village until 1837, when a disastrous smallpox epidemic forced their removal. Before the Mandan could return, a group of Arikara moved into the village and remained until about 1861. Descendants of the Arikara and Mandan of the Fort Clark, ND, region are today members of the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

Determinations Made by the Peabody Museum of Natural History

Officials of the Peabody Museum of Natural History have determined that:

- Pursuant to 25 U.S.C. 3001(3)(B), the one cultural item described above is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary object and the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim this cultural item should submit a written request with information in support of the claim to Professor David Skelly, Director, Yale Peabody Museum of Natural History, P.O. Box 208118, New Haven, CT 06520–8118, telephone (203) 432–3752, by June 2, 2017. After that date, if no additional claimants have come forward, transfer of control of the unassociated funerary object to the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota, may proceed.

The Peabody Museum of Natural History is responsible for notifying the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota, that this notice has been published.

Dated: March 22, 2017.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2017–08876 Filed 5–2–17; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–23160; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: History Colorado, Formerly Colorado Historical Society, Denver, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: History Colorado, formerly Colorado Historical Society, has completed an inventory of human remains, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and any present-day Indian tribes or Native Hawaiian organizations. Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to History Colorado. If no additional requestors come forward, transfer of control of the human remains to the Indian tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to History Colorado at the address in this notice by June 2, 2017.

ADDRESSES: Sheila Goff, NAGPRA Liaison, History Colorado, 1200 Broadway, Denver, CO 80203, telephone (303) 866–4531, email *sheila.goff@state.co.us.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of History Colorado, Denver, CO. The human remains were removed from an unknown location in Pueblo County, CO.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by History Colorado professional staff in consultation with representatives of the Arapaho Tribe of the Wind River Reservation, Wyoming; Cheyenne and Arapaho Tribes, Oklahoma (previously listed as the Cheyenne-Arapaho Tribes of Oklahoma); Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Comanche Nation, Oklahoma; Crow Tribe of Montana; Eastern Shoshone Tribe of the Wind River Reservation, Wyoming (previously listed as the Shoshone Tribe of the Wind River Reservation, Wyoming); Fort Sill Apache Tribe of Oklahoma; Jicarilla Apache Nation, New Mexico; Kiowa Indian Tribe of Oklahoma; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana; Ohkay Owingeh, New Mexico (previously listed as the Pueblo of San Juan); Pawnee Nation of Oklahoma; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Santa Clara, New Mexico; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Standing Rock Sioux Tribe of North & South Dakota; Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; Ute Mountain Ute Tribe (previously listed as the Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah); and Zuni Tribe of the Zuni Reservation, New Mexico. The following tribes were invited to consult but did not participate: the Apache Tribe of Oklahoma; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Oglala Sioux Tribe (previously listed as the Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota); and Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota. Hereafter all tribes listed above are referred to as ''The Consulted and Invited Tribes.''

History and Description of the Remains

In the 1950s, human remains representing, at minimum, three

individuals were removed from an unknown location in Pueblo County, CO, by a private citizen. The human remains were discovered in the estate of a private individual and turned over to the Pueblo Police Department who ruled out forensic interest. On July 25, 2016, the Pueblo Police Department notified the Office of the State Archaeologist and transferred the human remains to History Colorado. The human remains (OAHP 318) were determined to be of Native American ancestry and of indeterminate sex and age. No known individuals were identified. No associated funerary objects are present.

At the time of the excavation and removal of these human remains, the land from which the human remains were removed was not the tribal land of any Indian tribe. In January and February 2017, History Colorado consulted with all Indian tribes who are recognized as aboriginal to Pueblo County, CO, where these Native American human remains were removed. These tribes are the Arapaho Tribe of the Wind River Reservation, Wyoming; Cheyenne and Arapaho Tribes, Oklahoma (previously listed as the Cheyenne-Arapaho Tribes of Oklahoma); and the Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana. None of these Indian tribes agreed to accept control of the human remains. The aboriginal land tribes requested in writing that the human remains be transferred according to the *Process for Consultation, Transfer and Reburial of Culturally Unidentifiable Native American Human Remains and Associated Funerary Objects Originating From Inadvertent Discoveries on Colorado State and Private Lands (Process*) (2008, unpublished, on file with the Colorado Office of Archaeology and Historic Preservation). Consultation with the additional tribes listed under Consultation in this notice was conducted with tribes in the Great Plains Consultation Region of the *Process* to determine disposition. Under the *Process,* the Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado, and the Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah agreed to accept transfer of the human remains.

History Colorado, in partnership with the Colorado Commission of Indian Affairs, Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado, and the Ute Mountain Ute Tribe (previously listed as the Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah), conducted tribal consultations among the tribes with ancestral ties to the State of Colorado to develop the process for disposition of culturally unidentifiable Native American human remains and associated funerary objects originating from inadvertent discoveries on Colorado State and private lands. As a result of the consultation, the *Process* was developed.

The Native American Graves Protection and Repatriation Review Committee (Review Committee) is responsible for recommending specific actions for disposition of culturally unidentifiable human remains. On November 3–4, 2006, the *Process* was presented to the Review Committee for consideration. A January 8, 2007, letter on behalf of the Review Committee from the Designated Federal Officer transmitted the provisional authorization to proceed with the *Process* upon receipt of formal responses from the Jicarilla Apache Nation, New Mexico, and the Kiowa Indian Tribe of Oklahoma, subject to forthcoming conditions imposed by the Secretary of the Interior. On May 15–16, 2008, the responses from the Jicarilla Apache Nation, New Mexico, and the Kiowa Indian Tribe of Oklahoma were submitted to the Review Committee. On September 23, 2008, the Assistant Secretary for Fish and Wildlife and Parks, as the designee for the Secretary of the Interior, transmitted the authorization for the disposition of culturally unidentifiable human remains according to the *Process* and NAGPRA, pending publication of a Notice of Inventory Completion in the **Federal Register**. This notice fulfills that requirement.

43 CFR 10.11 was promulgated on March 15, 2010, to provide a process for the disposition of culturally unidentifiable Native American human remains recovered from tribal or aboriginal lands as established by the final judgment of the Indian Claims Commission or U.S. Court of Claims, a treaty, Act of Congress, or Executive Order, or other authoritative governmental sources. As there is no evidence to suggest that the human remains originated from tribal land and the tribes with aboriginal land did not wish to accept transfer of control, the human remains listed in this notice are eligible for transfer of control under the *Process.*

Determinations Made by History Colorado

Officials of History Colorado have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on osteological analysis.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of three individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian tribe.
- Pursuant to 43 CFR 10.11(c)(2)(i) and the *Process,* the disposition of the human remains may be to the Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado, and the Ute Mountain Ute Tribe (previously listed as the Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah).

Additional Requestors and Disposition

Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Sheila Goff, NAGPRA Liaison, History Colorado, 1200 Broadway, Denver, CO 80203, telephone (303) 866–4531, email *sheila.goff@state.co.us,* by June 2, 2017. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado, and Ute Mountain Ute Tribe (previously listed as the Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah) may proceed.

History Colorado is responsible for notifying The Consulted and Invited Tribes that this notice has been published.

Dated: March 27, 2017.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2017–08872 Filed 5–2–17; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–23135; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: Museum of Northern Arizona, Flagstaff, AZ

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Museum of Northern Arizona, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, has determined

that the cultural items listed in this notice meet the definition of unassociated funerary objects. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request to the Museum of Northern Arizona. If no additional claimants come forward, transfer of control of the cultural items to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to the Museum of Northern Arizona at the address in this notice by June 2, 2017.

ADDRESSES: Elaine Hughes, Museum of Northern Arizona, 3101 North Fort Valley Road, Flagstaff, AZ 86001, telephone (928) 774–5211 x228, email *ehughes@musnaz.org.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of the Museum of Northern Arizona, Flagstaff, AZ, that meet the definition of unassociated funerary objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Items

In 1978 and 1979, 105 cultural items were removed from the Cashion site (NA14690) in Maricopa County, AZ, during authorized archeological investigations conducted by the Museum of Arizona on behalf of the Arizona Nuclear Power Project, prior to the construction of a wastewater conveyance system that was to provide water to cool the Palo Verde Nuclear Generating Station. The 105 unassociated funerary objects are 14 pottery and ceramic fragments, 30 jewelry items and fragments, 2 pollen samples, 2 faunal bone fragments, 51 projectile points, and 6 tools and implements. The cultural items are associated with seven features identified by the field archeologists as secondary human cremations. No human bone was recovered.

Based on archeological evidence, geographic location, and object classification, these cultural items were made by Native Americans. Archeological evidence indicates that the Cashion site (NA14690), within the Salt River area of central Arizona, was occupied during the period A.D. 700–900 by the Hohokam people, for whom cremation was a common mortuary practice. Hopi and Zuni oral traditions also indicate that segments of the prehistoric Hohokam population migrated to areas occupied by the ancestors of the Hopi and Zuni and were assimilated into the resident populations. Archeological, historical, and oral tradition evidence indicate that there is a relationship of shared group identity between the Hohokam people and the present-day Piman and O'odham cultures, represented by the Ak-Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico.

Determinations Made by the Museum of Northern Arizona

Officials of the Museum of Northern Arizona have determined that*:*

- Pursuant to 25 U.S.C. 3001(3)(B), the 105 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony, and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Ak-Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to Elaine Hughes, Museum of Northern Arizona, 3101 North Fort Valley Road, Flagstaff, AZ 86001, telephone (928) 774–5211 x228, email *ehughes@musnaz.org,* by June 2, 2017.

After that date, if no additional claimants have come forward, transfer of control of the unassociated funerary objects to the Ak-Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico may proceed.

The Museum of Northern Arizona is responsible for notifying the Ak-Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico that this notice has been published.

Dated: March 22, 2017.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2017–08859 Filed 5–2–17; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–23073; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Department of Anthropology at Indiana University, Bloomington, IN

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Department of Anthropology at Indiana University has completed an inventory of human remains in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and present-day Indian tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control

of these human remains should submit a written request to the Indiana University NAGPRA Office. If no additional requestors come forward, transfer of control of the human remains to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the Indiana University NAGPRA Office at the address in this notice by June 2, 2017.

ADDRESSES: Dr. Jayne-Leigh Thomas, NAGPRA Director, Indiana University, NAGPRA Office, Student Building 318, 701 East Kirkwood Avenue, Bloomington, IN 47405, telephone (812) 856–5315, email *thomajay@indiana.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the Department of Anthropology at Indiana University, Bloomington, IN. The human remains were removed from multiple counties in the State of Louisiana.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by Indiana University professional staff in consultation with representatives of the Caddo Nation of Oklahoma.

History and Description of the Remains

On an unknown date, human remains representing, at minimum, 5 individuals were removed from the Hogg Place site in the State of Louisiana, and donated to the Department of Anthropology at Indiana University. No known individuals were identified. No associated funerary objects are present. The Hogg Place site was a village with an associated cemetery that was culturally affiliated with the Caddo Nation of Oklahoma, based on material culture and mortuary practices.

On an unknown date, human remains representing, at minimum, 19 individuals were removed from the Allen Place site in Nachitoches County, LA, and donated to the Department of Anthropology at Indiana University. No known individuals were identified. The 7 associated funerary objects are 1 raccoon ulna, 1 piece of red ocher, 1 faunal bone, 1 deer metapodial, and 3 mammal bones. The Allen Place site was culturally affiliated with the Caddo Nation of Oklahoma. In addition, notes associated with the human remains and funerary objects indicate the collection is culturally affiliated with the Caddo Nation of Oklahoma.

On an unknown date, human remains representing, at minimum, 1 individual were removed from the Wilkinson Place site in Nachitoches County and donated to the Department of Anthropology at Indiana University. No known individuals were identified. No associated funerary objects are present. The Wilkinson Place site was culturally affiliated with the Caddo Nation of Oklahoma. In addition, notes associated with the collection indicate it is culturally affiliated with the Caddo Nation of Oklahoma.

Determinations Made by the Department of Anthropology at Indiana University

Officials of the Department of Anthropology at Indiana University have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 25 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 7 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Caddo Nation of Oklahoma.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Dr. Jayne-Leigh Thomas, NAGPRA Director, Indiana University, NAGPRA Office, Student Building 318, 701 East Kirkwood Avenue, Bloomington, IN 47405, telephone (812) 856–5315, email *thomajay@indiana.edu,* by June 2, 2017. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Caddo Nation of Oklahoma may proceed.

The Department of Anthropology at Indiana University is responsible for notifying the Caddo Nation of Oklahoma that this notice has been published.

Dated: March 9, 2017.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2017–08865 Filed 5–2–17; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–23146; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Fowler Museum at UCLA, Los Angeles, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Fowler Museum at UCLA has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and associated funerary objects and any present-day Indian tribes or Native Hawaiian organizations. Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the Fowler Museum at UCLA. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the Indian tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Fowler Museum at UCLA at the address in this notice by June 2, 2017.

ADDRESSES: Wendy G. Teeter, Ph.D., Fowler Museum at UCLA, Box 951549, Los Angeles, CA 90095–1549, telephone

(310) 825–1864, email *wteeter@arts.ucla.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the Fowler Museum at UCLA, Los Angeles, CA. The human remains and associated funerary objects were removed from multiple sites in Orange County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Fowler Museum at UCLA professional staff in consultation with representatives of the La Jolla Band of Luiseno Indians, California (previously listed as the La Jolla Band of Luiseno Mission Indians of the La Jolla Reservation); Pala Band of Mission Indians (previously listed as the Pala Band of Luiseno Mission Indians of the Pala Reservation, California); Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation, California; Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California; Rincon Band of Luiseno Mission Indians of the Rincon Reservation, California; San Manuel Band of Mission Indians, California (previously listed as the San Manuel Band of Serrano Mission Indians of the San Manuel Reservation); and Soboba Band of Luiseno Indians, California. In addition, the Fowler Museum at UCLA professional staff consulted with the Juaneno Band of Mission Indians, Acjachemen Nation, and the Traditional Council of Pimu, both non-federally recognized Indian groups.

History and Description of the Remains

In 1978, human remains representing, at minimum, 50 individuals were removed from site CA–ORA–469C in Orange County, CA, by Marie Cottrell and the Archaeological Resource Management Corporation prior to the development of housing and curated at UCLA. The identification of discrete burials was difficult because the area was mechanically graded, destroying nearly the entire site and heavily disturbing the burials and their associated funerary objects. A total of 12 formal burials were identified along with a large number of fragmentary human remains. Based on discrete contexts and bone fits, the human remains represent 8 male and 3 female adults; 16 adults of indeterminate sex;16 infants, and 7 sub-adults. No known individuals were identified. The 319 associated funerary objects are 82 flakes and flaked tools; 4 cobble tools; 1 fire-cracked rock; 18 stone fragments; 3 pottery sherds; 26 shell beads; 2 lots of burial soil; 61 fragments of animal bone; 2 lots of animal bone; 56 fragments of shell; 4 lots of shell; 59 fragments of fossilized bone and shell; and 1 lot of fossilized bone and shell.

At some unknown time, human remains representing, at minimum, one individual was removed from San Joaquin Hills in Orange County, CA. No provenience information was provided for the location. Archeological sites from the San Joaquin Hills date between BC 860–1800 A.D. The human remains consist of one human pelvis fragment representing an individual of indeterminate age and sex. No known individual was identified. The one associated funerary object is a deer long bone fragment. The human remains and associated funerary object assume the same lab number (1690).

Consultation has identified site CA–ORA–469C and the San Joaquin Hills site to be within the traditional territories of the Acjachemen/Juaneno and Tongva/Gabrielino people. Linguistic and ethnohistoric evidence shows that these Takic-speaking peoples moved into the area by at least 4,500 B.P. These groups have a common heritage, but began to diverge by the beginning of the Middle period. Analysis of historical records from missions in the Greater Los Angeles area shows that at the time of mission recruitment, in the 18th and 19th centuries, the occupants of the area were descended from the populations living in the area.

Associated funerary objects from these sites are consistent with those of groups ancestral to the present-day Acjachemen/Juaneno and Tongva/Gabrielino people. The same range of artifact types and materials were used from the pre-contact period until historic times. Native consultants state that population mixing would not alter the continuity of the shared group identities of people associated with specific locales. Based on this evidence, continuity through time can be traced for these sites with present-day Acjachemen/Juaneno and Tongva/Gabrielino.

At the time of the excavation and removal of these human remains and associated funerary objects, the land from which the remains and objects were removed was not the tribal land of any Indian tribe or Native Hawaiian organization. In 2016, the Fowler Museum at UCLA consulted with Indian tribes who are recognized as aboriginal to the area from which these Native American human remains and associated funerary objects were removed. None of these Indian tribes agreed to accept control of the human remains and associated funerary objects. In October 2016, the Fowler Museum at UCLA agreed to transfer control of the human remains and associated funerary objects to the Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California.

Determinations Made by the Fowler Museum at UCLA

Officials of the Fowler Museum at UCLA have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 51 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 320 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and associated funerary objects and any present-day Indian tribe.
- Pursuant to 43 CFR 10.11(c)(2)(i), the disposition of the human remains and associated funerary objects may be to Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California.

Additional Requestors and Disposition

Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Wendy G. Teeter, Ph.D., Fowler Museum at UCLA, Box 951549, Los Angeles, CA 90095–1549, telephone (310) 825–1864, email *wteeter@arts.ucla.edu,* by June 2, 2017. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Pechanga Band of Luiseno

Mission Indians of the Pechanga Reservation, California, may proceed.

The Fowler Museum at UCLA is responsible for notifying Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California, that this notice has been published.

Dated: March 23, 2017.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2017–08869 Filed 5–2–17; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–23040; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Kansas State Historical Society, Topeka, KS

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Kansas State Historical Society has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the Kansas State Historical Society. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Kansas State Historical Society at the address in this notice by June 2, 2017.

ADDRESSES: Dr. Robert J. Hoard, Kansas State Historical Society, 6425 SW 6th Avenue, Topeka, KS 66615–1099, telephone 785–272–8681, extension 269, email *rhoard@kshs.org.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the Kansas State Historical Society, Topeka, KS. The human remains and associated funerary objects were removed from a creek bank in Cherokee County, KS.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Kansas State Historical Society professional staff in consultation with representatives of the Cherokee Nation; Eastern Band of Cherokee Indians; Eastern Shawnee Tribe of Oklahoma; Miami Tribe of Oklahoma; Ottawa Tribe of Oklahoma; Peoria Tribe of Indians of Oklahoma; Seneca Nation of Indians (previously listed as the Seneca Nation of New York); The Osage Nation (previously listed as the Osage Tribe), The Quapaw Tribe of Indians; Tonawanda Band of Seneca (previously listed as the Tonawanda Band of Seneca Indians of New York); Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma; and Wyandotte Nation.

History and Description of the Remains

On October 3, 2015, human remains representing, at minimum, one individual were removed from Cherokee County, KS. Four 15 year-old boys were camping in rural Cherokee County, KS, when they discovered the remains of a human skull near a creek bank on a tributary of Shoal Creek. They notified the Cherokee County Attorney, Nathan Coleman, who then contacted the Cherokee County Sheriff, David Groves. Sheriff Groves contacted forensic anthropologist Dr. Michael Finnegan, who examined the remains and determined them to be, more likely than not, from an American Indian male, approximately 30–40 years old. The human remains were determined to be approximately 500 years old. The human remains were subsequently sent to the Office of the State Archaeologist, Kansas Historical Society, on December 5, 2016. No known individuals were identified. The one associated funerary object is an animal metatarsal.

Determination of cultural affiliation is based on historic maps of the territories of Kansas and Nebraska available at University of Kansas Libraries and the Kansas Historical Society, early historical accounts, and archeological evidence of the tribes known to be associated with the area.

Determinations Made by the Kansas State Historical Society

Officials of the Kansas State Historical Society have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the one object described in this notice is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and The Osage Nation (previously listed as the Osage Tribe).

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Dr. Robert J. Hoard, Kansas State Historical Society, 6425 SW 6th Avenue, Topeka, KS 66615–1099, telephone 785–272–8681, extension 269, email *rhoard@kshs.org,* by June 2, 2017. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to The Osage Nation (previously listed as the Osage Tribe) may proceed.

The Kansas State Historical Society is responsible for notifying the Cherokee Nation; Eastern Band of Cherokee Indians; Eastern Shawnee Tribe of Oklahoma; Miami Tribe of Oklahoma; Ottawa Tribe of Oklahoma; Peoria Tribe of Indians of Oklahoma; Seneca Nation of Indians (previously listed as the Seneca Nation of New York); The Osage Nation (previously listed as the Osage Tribe), The Quapaw Tribe of Indians; Tonawanda Band of Seneca (previously listed as the Tonawanda Band of Seneca Indians of New York); Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma; and

Wyandotte Nation that this notice has been published.

Dated: March 7, 2017.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2017–08867 Filed 5–2–17; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–23011; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Department of the Interior, National Park Service, Grand Canyon National Park, Grand Canyon, AZ; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

SUMMARY: The U.S. Department of the Interior, National Park Service, Grand Canyon National Park, has corrected an inventory of human remains and associated funerary objects, published in a Notice of Inventory Completion in the **Federal Register** on April 10, 2013. This notice corrects the location from which the remains and objects were removed. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to Grand Canyon National Park. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Grand Canyon National Park at the address in this notice by June 2, 2017.

ADDRESSES: Christine Lehnertz, Superintendent, Grand Canyon National Park, P.O. Box 129, Grand Canyon, AZ 86023, telephone (928) 638–7945, email *chris_lehnertz@nps.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the correction of an inventory of human remains and associated funerary objects under the control of the U.S. Department of the Interior, National Park Service, Grand Canyon National Park, Grand Canyon, AZ. The human remains and associated funerary objects were removed from AZ A:13:0007, Mohave County, AZ.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the Superintendent, Grand Canyon National Park.

This notice corrects the location from which remains and objects were removed published in a Notice of Inventory Completion in the **Federal Register** (78 FR 21407–21408, April 10, 2013). It was recently discovered that information from two sites had been inadvertently combined into one record. Transfer of control of the items in this correction notice has not occurred.

Correction

In the **Federal Register** (78 FR 21407, April 10, 2013), column 1, paragraph 4, sentence 2, under the heading **SUPPLEMENTARY INFORMATION** is corrected by replacing ''Muav Cave'' with ''site AZ A:13:0007.''

In the **Federal Register** (78 FR 21407, April 10, 2013), column 2, paragraph 1, sentence 1, under the heading ''History and Description of the Remains'', is corrected by substituting the following sentence:

In 1965, human remains representing, at minimum, one individual were removed from site AZ A:13:0007 in Mohave County, AZ by river runner Bill Belknap and turned in to Bob Euler, Grand Canyon National Park Anthropologist.

In the **Federal Register** (78 FR 21407, April 10, 2013), column 2, paragraph 2, under the heading ''History and Description of the Remains'', is corrected by deleting the entire paragraph.

In the **Federal Register** (78 FR 21407, April 10, 2013), column 2, paragraph 3, sentence 1, under the heading ''History and Description of the Remains'', is corrected by substituting the following sentence:

The ceramics, which date to A.D. 900–1500, and lithics found at site AZ A:13:0007 are consistent with materials identified by archeologists as being associated with the Cerbat culture.

In the **Federal Register** (78 FR 21407, April 10, 2013), column 2, paragraph 3, sentence 4, under the heading ''History and Description of the Remains'', is corrected by replacing ''Muav Cave'' with ''site AZ A:13:0007.''

In the **Federal Register** (78 FR 21407, April 10, 2013), column 3, paragraph 1, sentence 1, under the heading ''History and Description of the Remains'', is corrected by replacing ''Muav Cave'' with ''site AZ A:13:0007.''

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Christine Lehnertz, Superintendent, Grand Canyon National Park, P.O. Box 129, Grand Canyon, AZ 86023, telephone (928) 638–7945, email *chris_lehnertz@nps.gov,* by June 2, 2017. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Havasupai Tribe of the Havasupai Reservation, Arizona; Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona; Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona; Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Nevada; Moapa Band of Paiute Indians of the Moapa River Indian Reservation, Nevada; and Paiute Indian Tribe of Utah (Cedar Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes (formerly Paiute Indian Tribe of Utah (Cedar City Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes)) (''The Tribes'') may proceed.

Dated: March 1, 2017.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2017–08860 Filed 5–2–17; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[[NPS–WASO–NAGPRA–23136: PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: San Diego Museum of Man, San Diego, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The San Diego Museum of Man has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains

and associated funerary objects and present-day Indian tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the San Diego Museum of Man. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the San Diego Museum of Man at the address in this notice by June 2, 2017.

ADDRESSES: Ben Garcia, Deputy Director, San Diego Museum of Man, 1350 El Prado, San Diego, CA 92101, telephone (619) 239–2001 ext. 17, email *bgarcia@museumofman.org.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the San Diego Museum of Man, San Diego, CA. The human remains and associated funerary objects were removed from the vicinity of Larsen Bay, Kodiak Island Borough, AK.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains and associated funerary objects was made by the San Diego Museum of Man professional staff in consultation with representatives of the Alutiiq Museum and Archaeological Repository on behalf of the Native Village of Larsen Bay.

History and Description of the Remains

In 1932, human remains representing, at minimum, one individual were recovered from the vicinity of Larsen Bay, Kodiak Island Borough, AK. No other provenience information was available. The human remains were donated to the San Diego Museum of Man by Hugh Logan in 1934. An examination of the human remains by the San Diego Museum of Man physical anthropology professional staff determined the individual to be a Native Alaskan individual of indeterminate sex and age. No known individual was identified. The 30 associated funerary objects are 1 whalebone wedge with grease pit, 1 whalebone wedge, 4 modified whalebone tools, 1 oil lamp fragment, 1 split cobble scraper, 1 stone hone, 6 sinkers, 1 stone tool, 3 hammerstones, 1 oil lamp preform, 1 tri-notched cobble pounder, and 9 stone knives.

Archeological data indicates that modern Alutiiq people evolved from prehistoric societies of the Kodiak region, and can trace their ancestry back over 7,500 years in the region. The cultural affiliation of this individual is determined to be to the Native Village of Larsen Bay.

Determinations Made by the San Diego Museum of Man

Officials of the San Diego Museum of Man have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 30 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Native Village of Larsen Bay.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and two associated funerary objects should submit a written request with information in support of the request to Ben Garcia, Deputy Director, San Diego Museum of Man, 1350 El Prado, San Diego, CA 92101, telephone (619) 239–2001 ext. 17, email *bgarcia@museumofman.org,* by June 2, 2017. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Native Village of Larsen Bay may proceed.

The San Diego Museum of Man is responsible for notifying the Native Village of Larsen Bay that this notice has been published.

Dated: March 22, 2017.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2017–08877 Filed 5–2–17; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–23014; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Tennessee Valley Authority, Knoxville, TN; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

SUMMARY: The Tennessee Valley Authority (TVA) has corrected an inventory of human remains published in a Notice of Inventory Completion in the **Federal Register** on September 1, 2016. This notice corrects the minimum number of individuals. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the TVA. If no additional requestors come forward, transfer of control of the human remains to the Indian tribe stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the TVA at the address in this notice by June 2, 2017.

ADDRESSES: Dr. Thomas O. Maher, TVA, 400 West Summit Hill Drive, WT11D, Knoxville, TN 37902–1401, telephone (865) 632–7458, email *tomaher@tva.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the correction of an inventory of human remains under the control of the TVA, Knoxville, TN. The human remains were removed from Flint River site 1MA48 in Madison County, AL.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

This notice corrects the minimum number of individuals published in a Notice of Inventory Completion in the **Federal Register** (81 FR 60380–60381, September 1, 2016). Additional human remains from these sites were discovered during the reorganization of a storage area. Transfer of control of the items in this correction notice has not occurred.

Correction

In the **Federal Register** (81 FR 60380, September 1, 2016), column 3, paragraph 2, sentence 1, under the heading ''History and Description of the Remains,'' is corrected by replacing the number ''242'' with the number ''243''.

In the **Federal Register** (81 FR 60381, September 1, 2016), column 2, paragraph 2, sentence 1, under the heading ''Determinations Made by the Tennessee Valley Authority,'' is corrected by replacing the number ''292'' with the number ''293''.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Dr. Thomas O. Maher, TVA, 400 West Summit Hill Drive, WT11D, Knoxville, TN 37902–1401, telephone (865) 632–7458, email *tomaher@tva.gov,* by June 2, 2017. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Chickasaw Nation may proceed.

TVA is responsible for notifying the Alabama-Coushatta Tribe of Texas (previously listed as the Alabama-Coushatta Tribes of Texas); Alabama-Quassarte Tribal Town; Cherokee Nation; Coushatta Tribe of Louisiana; Eastern Band of Cherokee Indians; Eastern Shawnee Tribe of Oklahoma; Poarch Band of Creeks (previously listed as the Poarch Band of Creek Indians of Alabama); The Chickasaw Nation; The Choctaw Nation of Oklahoma; The Muscogee (Creek) Nation; Thlopthlocco Tribal Town; and the United Keetoowah Band of Cherokee Indians in Oklahoma that this notice has been published.

Dated: March 1, 2017.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2017–08863 Filed 5–2–17; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–23188; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: U.S. Fish and Wildlife Service, Alaska Region, Anchorage, AK

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Fish and Wildlife Service, Alaska Region, Anchorage, AK (Alaska Region USFWS), in consultation with the appropriate Indian tribes or Native Hawaiian organizations, has determined that the cultural items listed in this notice meet the definition of unassociated funerary objects. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request to the Alaska Region USFWS. If no additional claimants come forward, transfer of control of the cultural items to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to the Alaska Region USFWS, at the address in this notice by June 2, 2017.

ADDRESSES: Edward J. DeCleva, Regional Historic Preservation Officer, U.S. Fish and Wildlife Service, Alaska Region, 1011 East Tudor Road, MS–235, Anchorage, AK 99503, telephone (907) 786–3399, email *Edward_decleva@fws.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of the USFWS Alaska Region that meet the definition of unassociated funerary objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Items

In 1967, 42 cultural items were removed from site NH–1, now identified as 49–XNI–003, in Nash Harbor, Nunivak Island, AK. They were transferred to the University of Oregon Museum of Natural and Cultural History in 2005. The 42 unassociated funerary objects are 1 girl's triangular wooden bowl; 2 fragments of a bone sled runner; 1 bone arrow shaft; 1 plain Nash Harbor ceramic vessel with grass and gravel temper; 1 ground slate whetstone; 1 piece of slate debitage; 33 pieces of Nash ceramics (some conjoined); and 2 matching fragments of a wood shaft.

In 1973, two cultural items were removed from site EN–1, now identified as 49–XNI–015, at Cape Etolin, Nunivak Island, AK. They were transferred to the University of Oregon Museum of Natural and Cultural History in 2005. The two unassociated funerary objects are 2 shotgun shells including shot and one bead.

Nunivak Island is traditional territory of the Central-Yup'ik-speaking Nunivak Eskimo or Nuniwarmiut people. Oral tradition and archeological investigations indicate that Nunivak Island was inhabited at least 2600 years ago and most likely continuously occupied by descendants of the initial population. The nature of the funerary artifacts suggests a post-contact age.

Determinations Made by the U.S. Fish and Wildlife Service, Alaska Region

Officials of the U.S. Fish and Wildlife Service, Alaska Region, have determined that:

- Pursuant to 25 U.S.C. 3001(3)(B), the 44 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Nuniwarmiut people of Alaska, today represented by the Native Village of Mekoryuk.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to Edward J. DeCleva, Regional Historic Preservation Officer, U.S. Fish and Wildlife Service, Alaska Region, 1011 East Tudor Road, MS–235, Anchorage AK 99503, telephone (907) 786–3399, email *Edward_decleva@fws.gov,* by June 2, 2017. After that date, if no additional claimants have come forward, transfer of control of the unassociated funerary objects to the Native Village of Mekoryuk may proceed.

The U.S. Fish and Wildlife Service, Alaska Region, is responsible for notifying the Native Village of Mekoryuk that this notice has been published.

Dated: March 29, 2017.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2017–08880 Filed 5–2–17; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–23165; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: University of Pennsylvania Museum of Archaeology and Anthropology, Philadelphia, PA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The University of Pennsylvania Museum of Archaeology and Anthropology (the Museum) has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the University of Pennsylvania Museum of Archaeology and Anthropology. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the University of Pennsylvania Museum of Archaeology and Anthropology at the address in this notice by June 2, 2017.

ADDRESSES: Dr. Julian Siggers, Williams Director, University of Pennsylvania Museum of Archaeology and Anthropology, 3260 South Street, Philadelphia, PA 19104, telephone (215) 898–4050.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the University of Pennsylvania Museum of Archaeology and Anthropology, Philadelphia, PA. The human remains and associated funerary objects were removed from Baranoff Island, AK.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the University of Pennsylvania Museum of Archaeology and Anthropology professional staff in consultation with representatives of the Central Council of the Tlingit & Haida Indian Tribes; Chilkat Indian Village (Klukwan); Chilkoot Indian Association (Haines); Hoonah Indian Association; Sitka Tribe of Alaska; Yakutat Tlingit Tribe; and Sealaska Corporation, a non-federally recognized entity.

History and Description of the Remains

In December 1931, human remains representing, at minimum, one individual were removed from a cave, in an unknown location, on the shoreline of Baranof Island in the Peril Strait in Alaska by Louis Shotridge. The human remains (UPM no. 31–29–17) represent the intact, fully clothed body of a single individual, male, 45–50 years old. The human remains are naturally mummified from the waist to the head. The pelvis and lower limbs are fully skeletonized. The human remains are believed to be those of Kagank, a Tlingit Kaagwaantaan Shaman. The 12 associated funerary objects include one exterior woven mat, one hide wrapping, one wool blanket, one wooden frame structure over the face, one nose pin, one pair of hide gloves, one hide shirt with quill decoration, one fine woven cloth, one pair of hide boots, one bird wing, one ornament of braided hair, and one twined basket.

The positioning and ornamentation of the human remains and associated funerary objects was reviewed by the Museum staff and several Tlingit consultants. The evidence strongly suggests that this individual is from the Northwest Coast region. Louis Shotridge collected the human remains directly from their original cave setting on the shoreline of Baronoff Island in the Peril Strait and shipped them to the University of Pennsylvania Museum in early 1932. According to collector information, consultation, and ethnographic and anthropological literature, the cave is located within traditional Tlingit Sitka Territory. Collector documents and consultation information identify this individual as Kagank, a Tlingit shaman from the Kaagwaantaan clan. According to Shotridge's ethnographic field notes, the name Kagank originates with the Kagwaantaan clan at Chilkat during the early period of their occupation of the area. According to consultation information provided in 2013, the name Kagank is also attributed to a 19th century Tlingit Kaagwaantaan shaman who died en route to a Deisheetan Clan potlatch. Members of the Kaagwaantaan Clan are represented today by the Central Council of Tlingit & Haida Indian Tribes; Chilkat Indian Village (Klukwan); Chilkoot Indian Association (Haines); Hoonah Indian Association; Sitka Tribe of Alaska; and Yakutat Tlingit Tribe. During consultation in 2005, representatives of the Hoonah Indian Association indicated that these human remains were not affiliated with the village of Hoonah.

Determinations Made by the University of Pennsylvania Museum of Archaeology and Anthropology

Officials of the University of Pennsylvania Museum of Archaeology and Anthropology have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice

represent the physical remains of one individual of Native American ancestry.

• Pursuant to 25 U.S.C. 3001(3)(A), the 12 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.

• Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Central Council of the Tlingit & Haida Indian Tribes; Chilkat Indian Village (Klukwan); Chilkoot Indian Association (Haines); Sitka Tribe of Alaska; and Yakutat Tlingit Tribe.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Julian Siggers, Director, University of Pennsylvania Museum of Archaeology and Anthropology, 3260 South Street, Philadelphia, PA 19104, telephone (215) 898–4050, by June 2, 2017. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Central Council of the Tlingit & Haida Indian Tribes; Chilkat Indian Village (Klukwan); Chilkoot Indian Association (Haines); Sitka Tribe of Alaska; and Yakutat Tlingit Tribe may proceed.

The University of Pennsylvania Museum of Archaeology and Anthropology is responsible for notifying the Central Council of the Tlingit & Haida Indian Tribes; Chilkat Indian Village (Klukwan); Chilkoot Indian Association (Haines); Hoonah Indian Association; Sitka Tribe of Alaska; Yakutat Tlingit Tribe; and Sealaska Corporation, a non-federally recognized entity, that this notice has been published.

Dated: March 28, 2017.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2017–08864 Filed 5–2–17; 8:45 am]

BILLING CODE 4312–72–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–23122; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Allen County-Fort Wayne Historical Society, Fort Wayne, IN

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Allen County-Fort Wayne Historical Society has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the Allen County-Fort Wayne Historical Society. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Allen County-Fort Wayne Historical Society at the address in this notice by June 2, 2017.

ADDRESSES: Walter Font, Curator, Allen County-Fort Wayne Historical Society, 302 East Berry Street, Fort Wayne, IN 46802, telephone (260) 426–2882, email *wfont@comcast.net.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the Allen County-Fort Wayne Historical Society, Fort Wayne, IN. The human remains and associated funerary objects were removed from multiple counties in the State of Indiana.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Allen County-Fort Wayne Historical Society professional staff in consultation with the Indiana University–Purdue University, Fort Wayne, Archaeology Survey office and representatives of the Miami Tribe of Oklahoma and the Pokagon Band of Potawatomi Indians, Michigan and Indiana.

History and Description of the Remains

On an unknown date, human remains representing, at minimum, one individual were removed from the Cunison Farm in Allen County, IN. At some time prior to 1926, the human remains were donated to the Allen County-Fort Wayne Historical Society by Charles L. Cunison. The human remains consist of an ulna and bone fragments from one individual, age and sex indeterminate. No known individual was identified. The 3 associated funerary objects are 1 knife blade, 1 textile remnant, and 1 iron tomahawk.

On an unknown date, human remains representing, at minimum, one individual were removed from Swinney Park in Allen County, IN. At some time prior to 1947, the human remains were donated to the Allen County-Fort Wayne Historical Society by Charles Freese. The human remains consist of a skull and identified as a young female, age indeterminate. No known individual was identified. The 1 associated funerary object is 1 brass pot with iron bail.

At some time between 1794 and 1814, human remains representing, at minimum, one individual were acquired from an unknown location during a conflict at or near Fort Wayne, IN, and were received by the Allen County-Fort Wayne Historical Society from the heirs of F. P. Randall at some time prior to 1926. The human remains consist of a length of dark hair, age and sex indeterminate. No known individual was identified. No associated funerary objects are present.

Dates for these site locations are late 1700s to early 1800s. The sites are related to the Miami Tribe of Oklahoma, whose tribal lands were located in Northeast Indiana from 1710 to the early 1800s. The principal villages were at or

near the present location of Fort Wayne, IN, primarily in the Spy Run district and the Lakeside area in Fort Wayne.

Determinations Made by the Allen County-Fort Wayne Historical Society

Officials of the Allen County-Fort Wayne Historical Society have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 3 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 4 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Miami Tribe of Oklahoma.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Walter Font, Curator, Allen County-Fort Wayne Historical Society, 302 East Berry Street, Fort Wayne, IN 46802, telephone (260) 426–2882, email *wfont@comcast.net,* by June 2, 2017. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Miami Tribe of Oklahoma may proceed.

The Allen County-Fort Wayne Historical Society is responsible for notifying the Miami Tribe of Oklahoma and the Pokagon Band of Potawatomi Indians, Michigan and Indiana, that this notice has been published.

Dated: March 21, 2017.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2017–08874 Filed 5–2–17; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1052]

Certain Thermoplastic-Encapsulated Electric Motors, Components Thereof, and Products and Vehicles Containing Same Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on March 21, 2017, under section 337 of the Tariff Act of 1930, as amended, on behalf of Intellectual Ventures II LLC of Bellevue, Washington. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain thermoplastic-encapsulated electric motors, components thereof, and products and vehicles containing same by reason of infringement of certain claims of U.S. Patent No. 7,154,200 (''the '200 patent''); U.S. Patent No. 7,067,944 (''the '944 patent''); U.S. Patent No. 7,067,952 (''the '952 patent''); U.S. Patent No. 7,683,509 (''the '509 patent''); and U.S. Patent No. 7,928,348 (''the '348 patent''). The complaint further alleges that an industry in the United States exists or is in the process of being established as required by the applicable Federal Statute.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2017).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on April 26, 2017, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain thermoplastic-encapsulated electric motors, components thereof, and products and vehicles containing same by reason of infringement of one or more of claims 1–2 and 4–7 of the '200 patent; claims 24–27 of the '348 patent; claims 1–2 and 14–15 of the '509 patent; claims 3, 9, 11 of the '944 patent; claims 10 and 12 of the '952 patent, and whether an industry in the United States exists or is in the process of being established as required by subsection (a)(2) of section 337;

(2) Pursuant to Commission Rule 210.50(b)(1), 19 CFR 210.50(b)(1), the presiding administrative law judge shall take evidence or other information and hear arguments from the parties and other interested persons with respect to the public interest in this investigation, as appropriate, and provide the Commission with findings of fact and a recommended determination on this issue, which shall be limited to the statutory public interest factors set forth in 19 U.S.C. 1337(d)(1), (f)(1), (g)(1);

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: Intellectual Ventures II LLC, 3150 139th Avenue SE., Building 4, Bellevue, WA 98005.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Aisin Seiki Co., Ltd., 2–1, Asahimachi, Kariya 448–0032, Aichi, Japan

Aisin Holdings of America, Inc., 1665 E 4th Street Road, Seymour, IN 47274

Aisin Technical Center of America, Inc., 15300 Centennial Drive, Northville, MI 48168

Aisin World Corporation of America, 15300 Centennial Drive, Northville, MI 48168
Bayerische Motoren Werke AG, Petuelring 130, D–80788, Munich, Germany
BMW of North America, LLC, 300 Chestnut Ridge Rd., Woodcliff Lake, NJ 07677
BMW Manufacturing Co., LLC, 1400 Hwy. 101 S., Greer, SC 29651–6731
Denso Corporation, 1–1, Showacho, Kariya 448–0029, Aichi, Japan
Denso International America, Inc., 24777 Denso Drive, Southfield, MI 48033
Honda Motor Co., Ltd., 1–1, 2-chome, Minami-Aoyama, Minato-ku, Tokyo 107–8556, Japan
Honda North America, Inc., 700 Van Ness Avenue, Torrance, CA 90501
American Honda Motor Co., Inc., 1919 Torrance Blvd., Torrance, CA 90501
Honda of America Mfg., Inc., 24000 Honda Pkwy., Marysville, OH 43040
Honda Manufacturing of Alabama, LLC, 1800 Honda Drive, Lincoln, AL 35096
Honda R&D Americas, Inc., 1900 Harpers Way, Torrance, CA 90501
Mitsuba Corporation, 1–2681, Hirosawacho, Kiryu 376–0013, Gunma, Japan
American Mitsuba Corporation, 2945 Three Leaves Drive, Mount Pleasant, MI 48858
Nidec Corporation, 338, Tonoshirocho, Kuze, Minami-Ku, Kyoto, Japan
Nidec Automotive Motor Americas, LLC, 1800 Opdyke Court, Auburn Hills, MI 48326
Toyota Motor Corporation, 1 Toyota-cho, Toyota City, Aichi Prefecture 471–8571, Japan
Toyota Motor North America, Inc., 601 Lexington Ave., 49th Floor, New York, NY 10022
Toyota Motor Sales, U.S.A., Inc., 19001 S. Western Avenue, Torrance, CA 90501
Toyota Motor Engineering & Manufacturing, North America, Inc., 25 Atlantic Avenue, Erlanger, KY 41018
Toyota Motor Manufacturing, Indiana, Inc., 4000 Tulip Tree Drive, Princeton, IN 47670
Toyota Motor Manufacturing, Kentucky, Inc., 1001 Cherry Blossom Way, Georgetown, KY 40324

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Suite 401, Washington, DC 20436; and

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: April 28, 2017.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2017–08923 Filed 5–2–17; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–578 and 731–TA–1368 (Preliminary)]

100- to 150-Seat Large Civil Aircraft From Canada; Institution of Antidumping and Countervailing Duty Investigations and Scheduling of Preliminary Phase Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping and countervailing duty investigation Nos. 701–TA–578 and 731–TA–1368 (Preliminary) pursuant to the Tariff Act of 1930 (''the Act'') to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of 100- to 150-seat large civil aircraft from Canada, provided for in subheading 8802.40.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value and alleged to be subsidized by the Government of Canada. Unless the Department of Commerce extends the time for initiation, the Commission must reach a preliminary determination in antidumping and countervailing duty investigations in 45 days, or in this case by June 12, 2017. The Commission's views must be transmitted to Commerce within five business days thereafter, or by June 19, 2017.

DATES: Effective April 27, 2017.

FOR FURTHER INFORMATION CONTACT: Carolyn Carlson (202–205–3002), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)), in response to a petition filed on April 27, 2017, by The Boeing Company, Chicago, Illinois.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

Participation in the investigations and public service list.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations

have the right to appear as parties in Commission antidumping duty and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Investigations has scheduled a conference in connection with these investigations for 9:30 a.m. on Thursday, May 18, 2017, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Requests to appear at the conference should be emailed to *William.Bishop@usitc.gov* and *Sharon.Bellamy@usitc.gov* (DO NOT FILE ON EDIS) on or before May 16, 2017. Parties in support of the imposition of countervailing and antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before May 23, 2017, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's Handbook on E-Filing, available on the Commission's Web site at *https://edis.usitc.gov,* elaborates upon the Commission's rules with respect to electronic filing.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these investigations must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that any information that it submits to the Commission during these investigations may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of these or related investigations or reviews, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: April 27, 2017.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2017–08894 Filed 5–2–17; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1053]

Certain Two-Way Radio Equipment and Systems, Related Software and Components Thereof; Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on March 29, 2017, under section 337 of the Tariff Act of 1930, as amended, on behalf of Motorola Solutions, Inc. of Chicago, Illinois. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain two-way radio equipment and systems, related software and components thereof by reason of infringement of U.S. Patent No. 8,116,284 (''the '284 patent''); U.S. Patent No. 8,279,991 (''the '991 patent''); U.S. Patent No. 7,369,869 (''the '869 patent''); U.S. Patent No. 8,032,169 (''the '169 patent''); U.S. Patent No. 7,729,701 (''the '701 patent''); U.S. Patent No. 9,099,972 (''the '972 patent''); and U.S. Patent No. 6,591,111 (''the '111 patent''). The complaint further alleges that an industry in the United States exists as required by the applicable Federal Statute.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: The Office of the Secretary, Docket Services Division, U.S. International Trade Commission, telephone (202) 205–1802.

SUPPLEMENTARY INFORMATION:

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2017).

Scope of Investigation: Having considered the complaint, the U.S.

International Trade Commission, on April 26, 2017, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain two-way radio equipment and systems, related software and components thereof by reason of infringement of one or more of claims 1, 2, 4–10, 12–16, 18, and 19 of the '284 patent; claims 1–5, 7, 8, 10, 12–16, 18, 20–25, 27, 29, and 30 of the '169 patent; claims 1–14, and 17–24 of the '869 patent; claims 1–5, 8–15, 17, and 18 of the '701 patent; claims 7 and 8 of the '991 patent; claims 1, 3, 4, and 6–8 of the '972 patent; and claims 1 and 3–16 of the '111 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: Motorola Solutions, Inc., 500 W. Monroe Street, Chicago, IL 60661.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Hytera Communications Corp. Ltd., Hytera Tower, Hi-Tech Industrial Park North #9108, Beihuan Road, Nanshan District, Shenzhen, China

Hytera America, Inc., 3315 Commerce Parkway, Miramar, FL 33025

Hytera Communications America (West), Inc., 300 Spectrum Center Drive, Suite 1120, Irvine, CA 92618

(3) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

The Office of Unfair Import Investigations will not participate as a party in this investigation.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: April 28, 2017.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2017–08924 Filed 5–2–17; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Bureau of Justice Statistics

[OMB Number 1121–NEW]

Agency Information Collection Activities; Proposed eCollection eComments Requested; New Collection: Supplemental Fraud Survey (SFS) to the National Crime Victimization Survey (NCVS) 2017

AGENCY: Bureau of Justice Statistics, Department of Justice.

ACTION: 60-day Notice.

SUMMARY: The Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Statistics, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until July 3, 2017.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Rachel Morgan, Statistician, Bureau of Justice Statistics, 810 Seventh Street NW., Washington, DC 20531 (email: *Rachel.Morgan@usdoj.gov;* telephone: 202–616–1707).

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

1. *Type of Information Collection:* New collection.

2. *The Title of the Form/Collection:* Supplemental Fraud Survey (SFS) to the National Crime Victimization Survey (NCVS) 2017.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number for the questionnaire is SFS–1. The applicable component within the Department of Justice is the Bureau of Justice Statistics, in the Office of Justice Programs.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Respondents will be persons age 18 or older living in households located throughout the United States sampled for the National Crime Victimization Survey (NCVS). The SFS will be conducted as a supplement to the NCVS in all sampled households for a three (3) month period. The SFS is an effort to measure the prevalence of financial fraud victimization among persons 18 or older, characteristics of fraud victims, and patterns of reporting fraud victimization to the police and other agencies. BJS plans to publish this information in reports and reference it when responding to queries from the U.S. Congress, Executive Office of the President, the U.S. Supreme Court, state officials, international organizations, researchers, students, the media, and

others interested in criminal justice statistics.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimate of the total number of respondents is 79,832. About 88% (70,252) will have no fraud victimization and will complete the short interview with an average burden of five (5) minutes. Among the 12% of respondents (9,580) who experience fraud victimization, the time to ask the detailed questions regarding the aspects of their fraud victimization is estimated to take an additional 10 minutes. Respondents will be asked to respond to this survey only once during the three month period.

6. *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 8,015 burden hours associated with this collection.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405A, Washington, DC 20530.

Dated: April 27, 2017.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2017–08882 Filed 5–2–17; 8:45 am]

BILLING CODE 4410–18–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Arts Advisory Panel Meetings

AGENCY: National Endowment for the Arts, National Foundation on the Arts and Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act, as amended, notice is hereby given that 16 meetings of the Arts Advisory Panel to the National Council on the Arts will be held by teleconference.

DATES: All meetings are Eastern time and ending times are approximate:

Media Arts (review of applications): This meeting will be closed.

Date and time: June 6, 2017; 11:30 a.m. to 1:30 p.m.

Media Arts (review of applications): This meeting will be closed.

Date and time: June 8, 2017; 11:30 a.m. to 1:30 p.m.

Media Arts (review of applications): This meeting will be closed.

Date and time: June 8, 2017; 2:30 p.m. to 4:30 p.m.

Artist Communities (review of applications): This meeting will be closed.

Date and time: June 14, 2017; 3:00 p.m. to 5:00 p.m.

Dance (review of applications): This meeting will be closed.

Date and time: June 14, 2017; 1:00 p.m. to 3:00 p.m.

Opera (review of applications): This meeting will be closed.

Date and time: June 14, 2017; 12:00 p.m. to 2:00 p.m.

Opera (review of applications): This meeting will be closed.

Date and time: June 14, 2017; 3:00 p.m. to 5:00 p.m.

Arts Education (review of applications): This meeting will be closed.

Date and time: June 15, 2017; 1:30 p.m. to 3:30 p.m.

Theater (review of applications): This meeting will be closed.

Date and time: June 15, 2017; 1:00 p.m. to 3:00 p.m.

Theater (review of applications): This meeting will be closed.

Date and time: June 15, 2017; 4:00 p.m. to 6:00 p.m.

Dance (review of applications): This meeting will be closed.

Date and time: June 16, 2017; 12:00 p.m. to 2:00 p.m.

Dance (review of applications): This meeting will be closed.

Date and time: June 16, 2017; 3:00 p.m. to 5:00 p.m.

Music (review of applications): This meeting will be closed.

Date and time: June 20, 2017; 12:00 p.m. to 2:00 p.m.

Music (review of applications): This meeting will be closed.

Date and time: June 20, 2017; 3:00 p.m. to 5:00 p.m.

Design (review of applications): This meeting will be closed.

Date and time: June 21, 2017; 11:30 a.m. to 1:30 p.m.

Design (review of applications): This meeting will be closed.

Date and time: June 21, 2017; 2:30 p.m. to 4:30 p.m.

ADDRESSES: National Endowment for the Arts, Constitution Center, 400 7th St. SW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Further information with reference to these meetings can be obtained from Ms. Sherry P. Hale, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506; *hales@arts.gov,* or call 202/682–5696.

SUPPLEMENTARY INFORMATION: The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of July 5, 2016, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of title 5, United States Code.

Dated: April 27, 2017.

Sherry P. Hale,

Staff Assistant, National Endowment for the Arts.

[FR Doc. 2017–08888 Filed 5–2–17; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL MEDIATION BOARD

Notice of Proposed Information Collection Requests

AGENCY: National Mediation Board.

ACTION: Notice.

SUMMARY: The National Mediation Board (NMB) invites comments on its proposal to the information collection request as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 3, 2017.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Office of Administration, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection contains the following: (1) Type of review requested, e.g. new, revision extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or

Record keeping burden. OMB invites public comment.

Currently, the NMB is soliciting comments concerning the Application for Investigation of Representation Dispute and is interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the agency; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the agency enhance the quality, utility, and clarity of the information to be collected; and (5) how might the agency minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: April 27, 2017.

Samantha T. Jones,

Assistant Chief of Staff, Administration, National Mediation Board.

Application for Investigation of Representation Dispute

Type of Review: Revision

Title: Application for Investigation of Representation Dispute,

OMB Number: 3140–0001

Frequency: On occasion

Affected Public: Carrier and Union Officials, and employees of railroads and airlines

Reporting and Recordkeeping Hour Burden:

Responses: 68 annually

Burden Hours: 17.00

1. Abstract: When a dispute arises among a carrier's employees as to who will be their bargaining representative, the National Mediation Board (NMB) is required by Section 2, Ninth, to investigate the dispute, to determine who is the authorized representative, if any, and to certify such representative. The NMB's duties do not arise until its services have been invoked by a party to the dispute. The Railway Labor Act is silent as to how the invocation of a representation dispute is to be accomplished and the NMB has not promulgated regulations requiring any specific vehicle. Nonetheless, 29 CFR 1203.2, provides that applications for the services of the NMB under Section 2, Ninth, to investigate representation disputes may be made on printed forms secured from the NMB's Office of Legal Affairs or on the Internet at *http://www.nmb.gov/representation/rapply.html.* The application requires the following information: the name of the carrier involved; the name or description of the craft or class involved; the name of the petitioning organization or individual; the name of the organization currently representing the employees, if any; the names of any other organizations or representatives involved in the dispute; and the estimated number of employees in the craft or class involved. This basic information is essential in providing the NMB with the details of the dispute so that it can determine what resources will be required to conduct an investigation.

2. The application form provides necessary information to the NMB so that it can determine the amount of staff and resources required to conduct an investigation and fulfill its statutory responsibilities. Without this information, the NMB would have to delay the commencement of the investigation, which is contrary to the intent of the Railway Labor Act.

3. There is no improved technological method for obtaining this information. The burden on the parties is minimal in completing the ''Application for Investigation of Representation Dispute.''

4. There is no duplication in obtaining this information.

5. Rarely are representation elections conducted for small businesses. Carriers/employers are not permitted to request our services regarding representation investigations. The labor organizations, which are the typical requesters, are national in scope and would not qualify as small businesses. Even in situations where the invocation comes from a small labor organization, we believe the burden in completing the application form is minimal and that no reduction in burden could be made.

6. The NMB is required by Section 2, Ninth, to investigate the dispute, to determine who is the authorized representative, if any, and to certify such representative. The NMB has no ability to control the frequency, technical, or legal obstacles, which would reduce the burden.

7. The information requested by the NMB is consistent with the general information collection guidelines of CFR 1320.6. The NMB has no ability to control the data provided or timing of the invocation. The burden on the parties is minimal in completing the ''Application for Investigation of Representation Dispute.''

8. No payments or gifts have been provided by the NMB to any respondents of the form.

9. There are no questions of a sensitive nature on the form.

10. The total time burden on respondents is 17.00 hours annually—this is the time required to collect information. After consulting with a sample of people involved with the collection of this information, the time to complete this information collection is estimated to average 15 minutes per response, including gathering the data needed and completion and review of the information.

Number of respondents per year 68

Estimated time per respondent 15 minutes

Total Burden hours per year 17 (68 × .25)

11. The total collection and mail cost burden on respondents is estimated at $615.40 annually ($582.08 time cost burden + $33.32 mail cost burden.)

a. The respondents will not incur any capital costs or start up costs for this collection.

b. Cost burden on respondents—detail:

The total time burden annual cost is $582.08

Time Burden Basis: The total hourly burden per year, upon respondents, is 17

Staff cost = $582.08

$34.24 per hour—based on mid level clerical salary

$34.24 × 17 hours per year = $582.08

We are estimating that a mid-level clerical person, with an average salary of $34.24 per hour, will be completing the ''Application for Investigation of Representation Dispute'' form. The total burden is estimated at 17 hours, therefore, the total time burden cost is estimated at $582.08 per year.

The total annual mailing cost to respondents is $33.32

Number of applications mailed by Respondents per year 68

Total estimated cost $33.32 (68 × .49 stamp)

The collection of this information is not mandatory; it is a voluntary request from airline and railroad carrier employees seeking to invoke an investigation of a representation dispute. After consulting with a sample of people involved with the collection of this information, the time to complete this information collection is estimated to average 15 minutes per response, including gathering the data needed and completion and review of the information. However, the estimated hour burden costs of the respondents may vary due to the complexity of the specific question in dispute. The revision of the form requiring a new application for every craft or class will have little effect on the number of application submitted. In 2012 and 2013, no applications were filed that included a request for representation services for more than one craft or class.

The application form is available from the NMB's Office of Legal Affairs and is also available on the Internet at *http://www.nmb.gov/representation/rapply.html*

12. The total annualized Federal cost is $889.49. This includes the costs of printing and mailing the forms upon request of the parties. The completed applications are maintained by the Office of Legal Affairs.

a. Printing cost $ 80.00

b. Mailing costs $ 10.02

Basis (mail cost): Forms are requested approximately 3 times per year and it takes 5 minutes to prepare the form for mail

Postage cost = $1.47

3 (times per year) × .49 (cost of postage)

Staff cost = $8.55

$.57 per minute (GS 9/10 $71,467 = $34.24 per hr. ÷ 60)

$.57 × 5 minutes per mailing = $2.85

$2.85 × 3 times per year = $8.55

Total Mailing Costs = $10.02

c. Processing Cost=$798.00

Basis (processing cost): Representation is requested approximately 70 times per year and it takes 20 minutes to process each application

Staff Cost = $798.00

$.57 per minute (GS 9/10 $71,467 = $34.24 per hr. ÷ 60)

$.57 × 20 minutes per mailing = $11.40

$11.40 × 70 times per year = $798.00

13. Item 13—no change in annual reporting and recordkeeping hour burden.

14. The information collected by the application will not be published.

15. The NMB will display the OMB expiration date on the form.

16(a)—the form does not reduce the burden on small entities; however, the burden is minimized and voluntary.

16 (b)—the form does not indicate the retention period for record keeping requirements.

16 (c)—the form is not part of a statistical survey.

Requests for copies of the proposed information collection request may be accessed from *www.nmb.gov* or should be addressed to Denise Murdock, NMB, 1301 K Street NW., Suite 250 E, Washington, DC 20005 or addressed to the e-mail address *murdock@nmb.gov* or faxed to 202–692–5081. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements, as well as comments on any legal and substantive issues raised, should be directed to Samantha Williams at 202–692–5010 or via internet address *williams@nmb.gov.* Individuals who use a telecommunications device for the deaf (TDD/TDY) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2017–08927 Filed 5–2–17; 8:45 am]

BILLING CODE 7550–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–28641; NRC–2017–0095]

Department of the Air Force; Robins Air Force Base, Georgia; Proposed Decommissioning Plan

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment application; opportunity to provide comments, request a hearing, and petition for leave to intervene.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has received a license amendment application from the Department of the Air Force (the licensee) for approval of a proposed decommissioning plan (DP). Materials License 42–23539–01AF authorizes the licensee to issue permits to individual Air Force bases for use of byproduct, source, and special nuclear material as authorized by the licensee's Radioisotope Committee. The licensee is requesting approval of a DP for cleanup of residual depleted uranium inside and underneath Building 181 at Robins Air Force Base, Georgia. The NRC is currently conducting a detailed technical review of the DP. If the DP is approved by the NRC, the licensee would be authorized to remediate the building interior and subsurface area in accordance with instructions provided in the DP.

DATES: Submit comments by June 2, 2017. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. A request for a hearing or petition for leave to intervene must be filed by July 3, 2017.

ADDRESSES: You may submit comments by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2017–0095. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Cindy Bladey, Office of Administration, Mail Stop: TWFN–8–D36M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Vivian Campbell, Region IV Office, U.S. Nuclear Regulatory Commission, 1600 E. Lamar Blvd., Arlington, Texas, 76011; telephone: 817–200–1455, email: *Vivian.Campbell@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2017–0095 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2017–0095.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The licensee's ''Review of the Decommissioning Plan (DP) of the Building 181 at Robins AFB GA'' is available in ADAMS under Accession No. ML17094A481.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2017–0095 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Introduction

The NRC has received, by memorandum dated March 21, 2017, an application to amend Materials License No. 42–23539–01AF, which authorizes the licensee to possess, store, and use radioactive materials at various locations around the U.S. Specifically, the licensee requested NRC approval of a proposed DP for Building 181 at Robins Air Force Base, Georgia. The licensee plans to remediate the interior surfaces and subsurface soils as necessary in accordance with the instructions provided in the DP. The licensee submitted the DP, in part, to comply with the requirements of § 30.36(g) of title 10 of the *Code of Federal Regulations* (10 CFR). The licensee also submitted the DP to comply with its commitments provided in the Memorandum of Understanding between the Air Force and the NRC dated September 19, 2014 (ADAMS Accession No. ML14262A340).

If the DP is approved by the NRC, the licensee's contractor will remediate the residual depleted uranium contamination remaining within several rooms of the building. After decommissioning of the interior areas, the licensee's contractor will conduct a final status survey of the remediated rooms in accordance with the instructions provided in the DP. When the building interior has been sufficiently remediated, the licensee plans to demolish portions of the building. As part of the demolition process, the licensee's contractor will conduct radiological surveys of the subsurface soils. Soils that exceed the site-specific cleanup criteria will be remediated at that time. The NRC staff may elect to conduct an inspection, to observe the decommissioning work. The NRC may also elect to conduct a confirmatory radiological survey to independently verify the results of the licensee's final status survey. After completion of the decommissioning process, the licensee is expected to submit the results of the final status survey to the NRC for review. In addition, the licensee is expected to ask the NRC to release the area of the former building for unrestricted use. If approved by the NRC, the staff will issue an amendment to the license, releasing the former building property from the license.

An NRC administrative completeness review found the application, including proposed DP, acceptable for a technical review (ADAMS Accession No. ML17094A481). Prior to approving the proposed action (approval of the DP), the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the NRC's regulations. As part of the technical review, the NRC staff may submit one or more requests for additional information to the licensee. The NRC staff will also review the licensee's site-specific cleanup criteria. The NRC's findings will be documented in a safety evaluation report. In addition, the NRC staff may elect to conduct an environmental assessment of the decommissioning project, if the Air Force has not conducted a sufficient review of the environmental impacts of the proposed action. The environmental assessment will be the subject of a subsequent notice in the **Federal Register**.

III. Notice and Solicitation of Comments

In accordance with 10 CFR 20.1405, the Commission is providing notice and soliciting comments from local and State governments in the vicinity of the site and any Federally-recognized Indian Tribe that could be affected by the decommissioning. This notice and solicitation of comments is published pursuant to § 20.1405, which provides for publication in the **Federal Register** and in a forum, such as local newspapers, letters to State or local organizations, or other appropriate forum, that is readily accessible to individuals in the vicinity of the site. Comments should be provided within 30 days of the date of this notice.

IV. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* Alternatively, a copy of the regulations is available at the NRC's Public Document Room, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions which the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by July 3, 2017. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions set forth in this section. Alternatively, a State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a hearing is granted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

V. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562, August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public Web site at *http://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click cancel when the link requests certificates and you

will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Dated at Arlington, Texas, this 21st April 2017.

For the Nuclear Regulatory Commission.

Mark R. Shaffer,

Director, Division of Nuclear Materials Safety, Region IV Office.

[FR Doc. 2017–08935 Filed 5–2–17; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2017–124 and CP2017–176; MC2017–125 and CP2017–177; CP2017–178]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* May 5, 2017.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's Web site (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.40.

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2017–124 and CP2017–176; *Filing Title:* Request of the United States Postal Service to Add Priority Mail Contract 314 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data; *Filing Acceptance Date:* April 27, 2017; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Katalin K. Clendenin; *Comments Due:* May 5, 2017.

2. *Docket No(s).:* MC2017–125 and CP2017–177; *Filing Title:* Request of the United States Postal Service to Add Priority Mail Express, Priority Mail & First-Class Package Service Contract 17 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data; *Filing Acceptance Date:* April 27, 2017; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Katalin K. Clendenin; *Comments Due:* May 5, 2017.

3. *Docket No(s).:* CP2017–178; *Filing Title:* Notice of United States Postal Service of Filing a Functionally Equivalent Global Expedited Package Services 3 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal; *Filing Acceptance Date:* April 27, 2017; *Filing Authority:* 39 CFR 3015.5; *Public Representative:* Katalin K. Clendenin; *Comments Due:* May 5, 2017.

This Notice will be published in the **Federal Register**.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2017–08948 Filed 5–2–17; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, & First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* May 3, 2017.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on April 27, 2017, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Express, Priority Mail, & First-Class Package Service Contract 17 to Competitive Product List.* Documents

are available at *www.prc.gov,* Docket Nos. MC2017–125, CP2017–177.

Ruth B. Stevenson,

Attorney, Federal Compliance.

[FR Doc. 2017–08883 Filed 5–2–17; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* May 3, 2017.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on April 27, 2017, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 314 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2017–124, CP2017–176.

Ruth B. Stevenson,

Attorney, Federal Compliance.

[FR Doc. 2017–08884 Filed 5–2–17; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80542; File No. SR–NYSE–2017–18]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt an Annual Fee Cap for Acquisition Companies

April 27, 2017.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on April 14, 2017, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt an annual fee cap for Acquisition Companies. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt an annual fee cap for Acquisition Companies.

Acquisition Companies (commonly referred to in the marketplace as ''special purpose acquisition companies'' or ''SPACs'') are listed pursuant to Section 102.06 of the NYSE Listed Company Manual (the ''Manual''). Acquisition Companies typically sell units in their initial public offering, consisting of a common equity security and a whole or fractional warrant to purchase common stock.[4] Holders of Acquisition Company units typically have the right to separate the units shortly after the IPO and the Exchange lists the common equity securities and the warrants (in addition to the units) upon separation.

Currently, Section 902.11 of the Manual specifies that the common shares listed as part of an Acquisition Company unit offering are subject to the annual fee schedule for common stock set forth in Section 902.03 of the Manual and the warrants are subject to the annual fee schedule set forth in Section 902.06 for short-term warrants to purchase equity securities.[5] The Exchange proposes to retain this annual fee structure, but proposes to establish a limit of $85,000 on the aggregate of all annual fees payable by an Acquisition Company with respect to its listed common shares and warrants in any calendar year.

An Acquisition Company's listing often lasts for a brief period of time. Under the Acquisition Company structure, the company's charter provides that it must either enter into a business combination within a specified limited period of time (typically two years or less, but no longer than three years is permitted under Section 102.06) or return the funds held in trust to the company's shareholders and dissolve the company. Acquisition Company business combinations do not always result in a continued listing of the post-business combination entity, as the resultant entity may be a private company or list on another exchange or the Acquisition Company may be acquired by another company that is already listed. In contrast to an Acquisition Company, an operating company that lists on the Exchange will typically remain listed for many years.

Acquisition Companies do not have the same right to receive services from the Exchange under Section 907.00 as operating companies do. An Acquisition Company is not deemed eligible for the services provided to an Eligible New Listing at the time of its initial listing, but becomes eligible for those services at such time as it has completed one or more business combinations having an aggregate fair market value of at least 80% of the value of the trust account as specified in Section 102.06 if it remains listed after meeting that requirement. As discussed above, many Acquisition Companies either liquidate or do not remain listed after their business combination is consummated.

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The number of warrants included in the units sold in an Acquisition Company IPO varies. Sometimes there is a warrant to purchase one common share included as part of each unit. Recently the units sold in some Acquisition Company IPOs have included a fractional warrant to purchase a share. In order to exercise these fractional warrants or trade them separate from the units, an investor would need to acquire sufficient warrants to be able to exercise them for whole numbers of shares.

[5] Section 902.03 requires listed companies to pay annual fees of $0.00105 per share for common stock, subject to a minimum of $59,500. Section 902.06 requires a fee of $0.00105 per warrant, subject to a $5,000 annual cap. All of the fees payable on both a company's common stock and warrants are subject to the overall annual cap on listing fees of $500,000 set forth in Section 902.02.

Consequently, many Acquisition Companies would never become eligible for services under Section 907.00.[6] Consequently, the Exchange believes it is reasonable to limit the amount of annual fees a listed Acquisition Company must pay, as the ineligibility of Acquisition Companies to receive services under Section 907.00 means that the cost of servicing an Acquisition Company listing would be generally lower than the cost to the Exchange of servicing the listing of an operating company of comparable size.

The Exchange does not expect the financial impact of the proposed amendment to be material in terms of the level of listing fees collected from issuers on the Exchange. Specifically, the Exchange notes that Acquisition Companies represent a relatively small number of potential listings and therefore anticipates that only a limited number of Acquisition Companies will list. In addition, the Exchange does not anticipate that the annual fees payable by all Acquisition Companies would exceed the proposed cap, so the reduction in revenue would not be relevant to all listed Acquisition Companies. Accordingly, the Exchange believes that the proposed rule change will not impact the Exchange's resource commitment to its regulatory oversight of the listing process or its regulatory programs.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act,[7] in general, and furthers the objectives of Sections 6(b)(4)[8] of the Exchange Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges and is not designed to permit unfair discrimination among its members and issuers and other persons using its facilities. The Exchange also believes that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act, in particular in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is consistent with Sections 6(b)(4) and 6(b)(5) of the Exchange Act in that it represents an equitable allocation of fees and does not unfairly discriminate among listed companies. In particular, the Exchange notes that the proposed amendment is not unfairly discriminatory as Acquisition Companies frequently have a much shorter period of listing on the Exchange than operating companies and they are ineligible to receive services from the Exchange that are generally available to newly-listed operating companies.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is designed to limit the amount a listed Acquisition Company pays in annual listing fees and should therefore increase competition for Acquisition Company listings by making the Exchange a more attractive listing venue.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[9] of the Act and subparagraph (f)(2) of Rule 19b–4[10] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[11] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2017–18 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2017–18. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2017–18 and should be submitted on or before May 24, 2017.

[6] Moreover, an Acquisition Company that remains listed after its business combination will be subject to the higher annual fees charged to operating companies commencing with its first full year of listing after consummation of its business combination.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(2).

[11] 15 U.S.C. 78s(b)(2)(B).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–08901 Filed 5–2–17; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80537; File No. SR–OCC–2017–802]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of No Objection To Advance Notice Filing Concerning the Options Clearing Corporation's Enhancements to OCC's Stock Loan Programs

April 27, 2017.

The Options Clearing Corporation (''OCC'') filed on February 28, 2017 with the Securities and Exchange Commission (''Commission'') advance notice SR–OCC–2017–802 (''Advance Notice'') pursuant to Section 806(e)(1) of the Payment, Clearing, and Settlement Supervision Act of 2010 (''Payment, Clearing and Settlement Supervision Act'')[1] and Rule 19b–4(n)(1)(i) under the Securities Exchange Act of 1934[2] (''Exchange Act'') to propose a number of enhancements to its Stock Loan/Hedge Program (''Hedge Program'') and Market Loan Program (collectively, the ''Stock Loan Programs''). The proposed changes would supplement OCC's risk management framework for the Stock Loan Programs to provide greater certainty concerning each participant's stock loan exposures and to mitigate risks that may arise in the event of a clearing member suspension. The Advance Notice was published for comment in the **Federal Register** on April 3, 2017.[3] The Commission has not received any comments on the Advance Notice to date. This publication serves as notice of no objection to the Advance Notice.

I. Background

OCC operates two Stock Loan Programs—the Hedge Program and Market Loan Program—in which a participating clearing member can lend an agreed-upon number of shares of eligible stock[4] to another clearing member in exchange for an agreed-upon value of U.S. dollar cash collateral and then novate the loan to OCC for clearing.[5] The Hedge Program permits clearing members to bilaterally execute stock loans and negotiate collateralization and other terms before submitting such stock loans to OCC for novation and clearing.[6] The Market Loan Program is operationally similar to the Hedge Program, but it permits clearing members to execute stock loans through a multilateral loan market.[7] In each case, upon completion of the novation process, OCC, in its capacity as a central counterparty, guarantees return of (i) loaned stock, or that stock's value, to the lending clearing member, and (ii) the value of cash collateral to the borrowing clearing member.[8] In addition, OCC makes mark-to-market margin payments on a daily basis to ensure stock loans remain fully collateralized.

II. Description of the Advance Notice

OCC's Advance Notice proposes a number of changes to the Stock Loan Programs and its Rules governing those Programs.[9] First, to improve trade certainty and transparency concerning clearing member exposures, OCC proposes amendments to its rules governing the Stock Loan Programs to do the following: (1) Require clearing members to have policies and procedures to reconcile stock loan positions each business day; (2) state explicitly that the controlling record for stock loan positions for margin and other purposes is OCC's ''golden'' record; and (3) provide that stock loan positions remain in effect until OCC's records reflect stock loan terminations. Second, to mitigate risks that may arise in the event of a clearing member suspension, OCC proposes amendments to its rules governing the Stock Loan Programs to do the following: (1) Provide a two-day trading window in which clearing members must execute close-out transactions, also known as ''buy-in'' or ''sell-out'' transactions; (2) provide broad authority for OCC to use reasonable prices to settle close-out transactions; and (3) permit OCC to close out and re-establish the matched-book stock loan positions of a suspended Hedge Program clearing member through termination by offset and ''re-matching'' with other clearing members. Each of these proposals is discussed in more detail below.

A. Proposed Measures To Improve Trade Certainty and Transparency

OCC's Advance Notice proposes three amendments to the rules governing its Stock Loan Programs that are intended to improve trade certainty and transparency for clearing members and OCC.

1. Daily Reconciliation of Stock Loan Positions

Clearing members that participate in the Hedge Program and the Market Loan Program execute and terminate stock loans on a bilateral basis. Following execution or termination of stock loans, OCC requires clearing members to promptly report stock loans directly to OCC, or to facilitate such reporting to OCC through the Depository Trust Corporation (''DTC''), ensuring OCC accepts stock loans for clearing and records the novation or termination for margin and other purposes. Under the current trade-reporting process, clearing members may fail to report (or to have DTC report) stock loans to OCC in a timely manner, increasing uncertainty in the novation process and decreasing transparency with respect to OCC's stock loan positions and obligations as a central counterparty and guarantor. The current process thereby presents risk management risks both to OCC and clearing members.

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[12] 17 CFR 200.30–3(a)(12).

[1] 12 U.S.C. 5465(e)(1). The Financial Stability Oversight Council designated OCC a systemically important financial market utility (''SIFMU'') on July 18, 2012. *See* Financial Stability Oversight Council 2012 Annual Report, Appendix A, *http://www.treasury.gov/initiatives/fsoc/Documents/2012%20Annual%20Report.pdf.* Therefore, OCC is required to comply with the Payment, Clearing and Settlement Supervision Act and file advance notices with the Commission.

[2] 17 CFR 240.19b–4(n)(1)(i).

[3] *See* Securities Exchange Act Release No. 34–80323 (March 28, 2017), 82 FR 16260 (April 3, 2017) (File No. SR–OCC–2017–802) (''Notice of Filing of Advance Notice''). OCC also filed a proposed rule change with the Commission pursuant to Section 19(b)(1) of the Securities Exchange Act (''Exchange Act'') and Rule 19b–4 thereunder, seeking approval of changes to its rules necessary to implement the Advance Notice. 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b–4, respectively. The Commission published notice of the proposed rule change in the **Federal Register** and has not received any comments on the proposal to date. *See* Securities Exchange Act Release No. 34–80323 (March 8, 2017), 82 FR 13690 (March 14, 2017) (File No. SR–OCC–2017–002).

[4] *See* OCC Rules 2202 and 2202A (providing that stock loans under the Hedge Program and the Market Loan Program, respectively, must effect transfer only of ''Eligible Stock,'' as defined in Article I of OCC's By-laws). OCC permits clearing members to execute stock loans involving 6,191 eligible securities as March 29, 2017, available at *https://www.theocc.com/webapps/stock* loan-eligible-securities.

[5] The Hedge Program is governed by Article XXI of OCC's By-Laws and Chapter XXII of OCC's Rules. The Market Loan Program is governed by Article XXIA of OCC's By-Laws and Chapter XXIIA of OCC's Rules. The Commission understands that OCC cleared approximately 10–15% of the overall U.S.-equities stock loan market through the two programs, as of November 2015.

[6] The Commission understands that the Hedge Program accounts for approximately 95% of cleared stock loan volume at OCC, as of November 2015.

[7] Automated Equity Finance Markets, Inc. is the sole loan market through which clearing members can execute stock loans in the Market Loan Program.

[8] *See* OCC Rules 2202(b) and 2202A(b).

[9] For a more detailed description of the specific rule changes OCC is proposing, *see* Notice of Filing of Advance Notice, *supra* note 3.

To address these risk management risks, OCC proposes to require each clearing member to have adequate policies and procedures to perform daily reconciliations of stock loan positions against OCC's records and to resolve stock loan discrepancies, if any, by 9:30 a.m. Central Time the following business day.[10] These proposed rule changes, according to OCC, would improve trade certainty and transparency for clearing members participating in the Hedge Program and the Market Loan Program and thereby reduce operational and other risks for OCC and clearing members.

2. Controlling Records for Open and Terminated Stock Loan Positions

To support and supplement the proposed daily reconciliation requirements for clearing member participation in the Stock Loan Programs, OCC proposes to explicitly state in its rules that OCC's stock loan records constitute the controlling records for margin and other purposes. Specifically, the proposed rules would specify that OCC's records, which OCC refers to as the ''golden copy'' records, prevail in the event of a conflict with clearing member records and that clearing members must continue to perform on obligations relating to open stock loan positions identified in the golden copy records.[11] The proposed rules, according to OCC, support trade certainty and transparency in the Hedge and Market Loan Programs.

3. Termination Records for Stock Loan Positions

Finally, to conform OCC's stock loan termination provisions to the proposed changes relating to controlling records described above, OCC proposes rule changes to clarify that stock loans would be considered terminated for margin and other purposes only when OCC's records reflect termination of the stock loan.[12] OCC states that these conforming changes also would support trade certainty and transparency in the Stock Loan Programs by ensuring consistency among and within the different rules applicable to the Stock Loan Programs.

B. Proposed Measures To Mitigate Stock Loan Risks in the Event of a Clearing Member Suspension

In addition to the proposals intended to improve trade certainty and transparency, the Advance Notice also proposes three amendments to address certain risks that may arise in the event that OCC suspends a clearing member participant in the Stock Loan Programs.

1. Stock Loan Close-Out Timeframe in the Event of a Clearing Member Suspension

Under current Stock Loan Program rules, OCC may seek to close out a suspended clearing member's stock loan positions by instructing non-suspended clearing member counterparties to execute close-out transactions within a reasonable period of time.[13] Although non-suspended clearing members must be prepared to defend the timeliness of close-out transactions under current rules, clearing members are not required to execute close-out transactions based on OCC's instructions within a specific period of time. Accordingly, if non-suspended clearing members execute buy-in or sell-out transactions over an extended period of time following OCC's close-out instruction, OCC incurs a risk that close-out prices may vary significantly from the prices used to mark the stock loan positions to market for margin purposes. OCC's credit exposure, in part, depends on the significance of these price differences relative to the suspended clearing member's available margin resources.

To mitigate these risks, OCC proposes to require clearing members to execute close-out transactions within a fixed two-day trading window in the event of a clearing member suspension. More specifically, OCC proposes to require non-suspended clearing members to execute close-out transactions by the end of the business day following OCC's instruction to close out stock loans with the suspended clearing member. If a non-suspended clearing member is unable to execute the close-out transactions within that two-day timeframe, OCC itself would terminate the clearing member's relevant stock loans and effect settlement based on the market price of the underlying securities, as determined by OCC. According to OCC, the proposed changes are intended to ensure that non-suspended clearing members execute close-out transactions in a timeframe consistent with OCC' s two-day liquidation assumption for stock loan margin purposes, which should reduce OCC's credit exposure from significant differences between clearing member-effectuated close-out prices and the prices used to collect mark-to-market payments from the suspended clearing member.

2. Reasonable Prices for Stock Loan Close-Out Transactions in the Event of a Clearing Member Suspension

Under current rules, OCC may seek to close out a suspended clearing member's stock loan positions by instructing non-suspended clearing member counterparties to execute buy-in or sell-out transactions. These close-out transactions must be executed in a ''commercially reasonable manner.'' [14] If a borrowing clearing member is suspended and unable to return securities under a stock loan, OCC may instruct the lending clearing member to execute a ''buy-in'' transaction for the number of shares in the stock loan's underlying security that would be necessary to return the lending clearing member to its position prior to entering into the stock loan with the suspended clearing member. If the lending clearing member is suspended and unable to return the value of collateral, OCC similarly may instruct the borrowing clearing member to execute a ''sell-out'' transaction for the number of shares in the underlying security that would be necessary to return the borrowing clearing member to its position prior to entering into the stock loan. In each case, the non-suspended clearing member's stock loan position is terminated and settled based on the price reported for the close-out transaction.

To incentivize ''reasonable'' pricing of close-out transactions in the event of a clearing member suspension, OCC proposes to provide itself authority to withdraw from a clearing member's account the value of any difference between clearing member-reported prices and ''reasonable'' close-out transaction prices, as determined by OCC based on an assessment of market conditions at the time of execution.[15]

[10] *See* Proposed Rule 2205 of the Hedge Program and Proposed Rule 2205A of the Market Loan Program.

[11] *See* Proposed Articles XXI and XXIA of OCC's By-Laws.

[12] *See* Proposed Rule 2209 in the Hedge Program and Proposed Rule 2209A in the Market Loan Program.

[13] More specifically, Rules 2209(b) and (f) and 2211 of the Hedge Program, and Rules 2209A(b) and (c) and 2211A of the Market Loan Program require clearing members to execute close-out transactions in a ''commercially reasonable manner'' and to be prepared to defend the timing, prices, and costs of such transactions.

[14] *Id.*

[15] *See* Proposed Rule 2211. The proposal provides that a clearing member may demonstrate that a close-out transaction was executed at a ''reasonable'' price by providing evidence that the transaction fell within the underlying stock's trading range on the date of execution. *Id.* To the extent a clearing member impacts the market price of an underlying security through close-out transactions, OCC, in its discretion, may consider such impact in its assessment of market conditions at the time of execution.

This proposed price-substitution authority, according to OCC, would incentivize non-suspended clearing members to execute and report close-out transactions in a commercially reasonable manner.[16]

3. Re-Matching in the Event of a Hedge Clearing Member Suspension

Under OCC's current rules, in the event of a clearing member suspension, OCC can fully unwind a suspended Hedge Clearing Member's matched-book positions [17] only if it recalls all borrowed securities from specific borrowing clearing members and returns those securities to specific lending clearing members. Under current rules, this recall-and-return process is operationally complex because the nature of these unwinds would require OCC to (i) effect transfer of significant numbers of securities to significant numbers of non-suspended clearing members; and (ii) settle an equal number of payments against final settlement prices. Moreover, during this recall-and-return process, the non-suspended clearing members may experience unexpected imbalances in their overall stock loan positions, resulting in increased margin requirements or price risks relating to re-execution of the stock loans in a potentially distressed market.[18]

To address these operational complexities and the potential consequences for both OCC and its clearing members, OCC proposes new rules that would permit it to terminate a suspended Hedge Clearing Member's matched-book stock loans in the Hedge Program by offset and to ''re-match'' the positions of the non-suspended counterparties according to priorities established by OCC's matching algorithm.[19] According to OCC, re-matching stock loans pursuant to an algorithm would facilitate orderly and efficient termination and re-establishment of stock loans involving a suspended Hedge Clearing Member, thereby mitigating operational and pricing risks that may arise for non-suspended clearing members during the recall-and-return process.

III. Discussion and Commission Findings

Although the Payment, Clearing and Settlement Supervision Act does not specify a standard of review for an advance notice, the stated purpose of the Payment, Clearing and Settlement Supervision Act is instructive.[20] The stated purpose of the Payment, Clearing and Settlement Supervision Act is to mitigate systemic risk in the financial system and promote financial stability by, among other things, promoting uniform risk management standards for SIFMUs and strengthening the liquidity of SIFMUs.[21]

Section 805(a)(2) of the Payment, Clearing and Settlement Supervision Act [22] authorizes the Commission to prescribe regulations containing risk management standards for the payment, clearing, and settlement activities of designated clearing entities engaged in designated activities for which the Commission is the supervisory agency. Section 805(b) of the Payment, Clearing and Settlement Supervision Act [23] provides the following objectives and principles for the Commission's risk management standards prescribed under Section 805(a):

- To promote robust risk management;
- To promote safety and soundness;
- To reduce systemic risks; and
- To support the stability of the broader financial system.

Section 805(c) provides, in addition, that the Commission's risk management standards may address such areas as risk management and default policies and procedures, among others areas.[24]

The Commission has adopted risk management standards under Section 805(a)(2) of the Payment, Clearing and Settlement Supervision Act and the Exchange Act (the ''Clearing Agency Rules'').[25] The Clearing Agency Rules require each covered clearing agency, among other things, to establish, implement, maintain, and enforce written policies and procedures that are reasonably designed to meet certain minimum requirements for operations and risk management practices on an ongoing basis. As such, it is appropriate for the Commission to review advance notices for consistency with the objectives and principles for risk management standards described in Section 805(b) of the Payment, Clearing and Settlement Supervision Act and the Clearing Agency Rules.

A. Consistency With Section 805(b) of the Payment, Clearing and Settlement Supervision Act

The Commission believes each proposal in OCC's Advance Notice is consistent with promoting robust risk management, promoting safety and soundness, reducing systemic risks, and supporting the stability of the broader financial system, the stated objectives and principles of Section 805(b) of the Payment, Clearing and Settlement Supervision Act.[26]

First, the Commission believes that OCC's three proposals to improve trade certainty and transparency in the Stock Loan Programs are consistent with promoting robust risk management. The Commission agrees with OCC's analysis that its proposal to require clearing members to implement adequate policies and procedures to reconcile stock loan positions with OCC's records on a daily basis could promote robust risk management by reducing financial and other risks to OCC and clearing members. The Commission also believes that OCC's proposal to provide explicitly in its rulebook that its stock loan records would prevail in the event of a conflict with clearing member records, and that clearing members must continue to perform on all stock loan positions reflected in OCC's records also promotes robust risk management by encouraging clearing members to understand, manage, and promptly report stock loan transactions. Finally, the Commission believes that OCC's proposal to provide that stock loan positions remain in effect until OCC's records reflect stock loan terminations promotes robust risk management by

[16] If the close-out transaction is not executed within the two-day period provided in Proposed Rule 2212, however, the stock loan would be terminated and settled based on OCC's marking price at the end of the period.

[17] *See* definition of ''Matched-Book Positions'' in Article I of OCC's By-laws. A clearing member that maintains a ''matched book'' for stock loans generally borrows no more of a specific security than it lends to other clearing members in the program. *See also* Notice of Filing of the Advance Notice, *supra* note 3 at 9.

[18] OCC's present margin methodology nets matched-book stock loan positions prior to calculating clearing member exposures. Thus, a non-suspended clearing member's margin requirements may increase on account of the temporary stock loan imbalances resulting from a clearing member suspension.

[19] OCC's matching algorithm would implement priorities in OCC's Proposed Rule 2212(d), which establishes an order of operations based on the size of stock loan positions and the existence of master securities lending agreements between the non-suspended clearing members.

[20] *See* 12 U.S.C. 5461(b).

[21] *Id.*

[22] 12 U.S.C. 5464(a)(2).

[23] 12 U.S.C. 5464(b).

[24] 12 U.S.C. 5464(c)

[25] 17 CFR 240.17Ad–22. *See* Securities Exchange Act Release No. 68080 (October 22, 2012), 77 FR 66220 (November 2, 2012) (S7–08–11). *See also* Securities Exchange Act Release No. 78961 (September 28, 2016), 81 FR 70786 (October 13, 2016) (S7–03–14) (''Covered Clearing Agency Standards''). The Commission established an effective date of December 12, 2016, and a compliance date of April 11, 2017, for the Covered Clearing Agency Standards. On March 4, 2017, the Commission granted covered clearing agencies a temporary exemption from compliance with Rule 17Ad–22(e)(3)(ii) and certain requirements in Rules 17Ad–22(e)(15)(i) and (ii) until December 31, 2017, subject to certain conditions. OCC is a ''covered clearing agency'' as defined in Rule 17Ad–22(a)(5).

[26] 12 U.S.C. 5464(b).

emphasizing that OCC's records supersede the records of clearing members and further encouraging clearing members to understand, manage, and promptly report stock loan transactions. The Commission therefore believes these specific proposals are consistent with promoting robust risk management.

Second, the Commission believes that OCC's three proposals to mitigate certain risks in the event of a clearing member suspension are consistent with promoting robust risk management. The proposal to provide a two-day trading window in which clearing members must execute close-out transactions, or opt for mandatory settlement, promotes robust risk management by requiring non-suspended clearing members to complete close-out transactions in a timeframe that is consistent with OCC's liquidation assumptions. The proposed alignment of the close-out period with OCC's liquidation assumptions reduces the risk that close-out prices vary too significantly from the prices used to mark the suspended clearing member's stock loans to market. OCC's proposed price-substitution authority also promotes robust risk management by further encouraging non-suspended clearing members to execute close-out transactions in a commercially reasonable manner, thereby reducing financial risk to OCC. Finally, the proposed rule changes in the Hedge Program to permit OCC to terminate and re-establish a suspended clearing member's positions through offset and ''re-match'' promotes robust risk management by facilitating orderly and efficient termination and re-establishment of stock loans involving a suspended clearing member, which mitigates operational and pricing risks that may arise for OCC and clearing members during the recall-and-return process. The Commission therefore believes that these aspects of the proposal are consistent with the promotion of robust risk management.

Based on the conclusions discussed above, the Commission also believes that OCC's proposal is consistent with promoting the safety and soundness of both OCC and clearing members who participate in the Stock Loan Programs. Accordingly, because promoting the safety and soundness of both OCC and clearing members who participate in the Stock Loan Programs, in turn, both reduces systemic risks that may arise from clearing member participation in these programs and supports the stability of the broader financial system, the Commission also believes that the proposals contained in the Advance Notice are consistent with the stated objectives and principles of Section 805(b) of the Payment, Clearing and Settlement Supervision Act.

B. Consistency With Rules 17Ad–22(e)(13) and (e)(23) Under the Exchange Act

The Commission believes OCC's proposals in the Advance Notice are consistent with Covered Clearing Agency Standards, specifically Rules (e)(13) and (e)(23) under the Exchange Act.[27] Rule 17Ad–22(e)(13) under the Exchange Act requires each covered clearing agency to establish, implement, maintain, and enforce policies and procedures reasonably designed to, among other things, ensure it has the authority and operational capacity to take timely action to contain losses and continue to meet its obligations in the event of a clearing member default.[28] More generally, Rule 17Ad–22(e)(23) under the Exchange Act requires covered clearing agencies to establish, implement, maintain, and enforce policies and procedures reasonably designed to, among other things, provide for the public disclosure of all relevant rules and material procedures, including key aspects of default rules and procedures.[29]

The Commission believes the proposed changes relating to clearing member suspension in OCC's Advance Notice are consistent with Rule 17Ad–22(e)(13) under the Exchange Act. By proposing a fixed trading window in which clearing members must either execute close-out transactions relating to a clearing member suspension or opt for OCC-mandated settlements, OCC is seeking new authority that the Commission believes will better ensure that OCC can take timely actions to contain suspension-related losses and continue to meet stock loan-related obligations in the Stock Loan Programs. The Commission further believes that the proposed authority permitting OCC to withdraw the value of any difference between the clearing member-reported prices and OCC-determined close-out prices likewise better ensures that OCC can contain suspension-related losses, as clearing members would be further incentivized to execute timely close-out transactions at market prices. Finally, the Commission believes that the proposal relating to re-matching-in-suspension better ensures that OCC has authority and operational capacity to contain losses and meet obligations to clearing members in the Hedge Program, in particular through new rules and mechanisms that reduce the operational, credit, and re-execution risks attendant to the recall-and-return process. The Commission therefore believes OCC's proposal is consistent with Rule 17Ad–22(e)(13) under the Exchange Act.

The Commission also believes that OCC's proposals are consistent with Rule 17Ad–22(e)(23) under the Exchange Act. Each aspect of OCC's Advance Notice is proposed to be disclosed publicly in OCC's rules governing the Stock Loan Programs, including the key suspension-related aspects of its rules providing for close-out transaction timeframes, new price-substitution authority, and termination and re-matching-in-suspension. The Commission therefore believes that OCC's proposal is consistent with Rules 17Ad–22(e)(23) under the Exchange Act.

IV. Conclusion

It is therefore noticed, pursuant to Section 806(e)(1)(G) of the Payment, Clearing and Settlement Supervision Act,[30] that the Commission *does not object* to Advance Notice (SR–OCC–2017–802) and that OCC is *authorized* to implement the proposed change.

By the Commission.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–08892 Filed 5–2–17; 8:45 am]

BILLING CODE 8011–01–P

[27] 17 CFR 240.17Ad–22(e)(13), and 17 CFR 240.17Ad22(e)(23).

[28] 17 CFR 240.17Ad–22(e)(13).

[29] 17 CFR 240.17Ad–22(e)(23).

[30] 12 U.S.C. 5465(e)(1)(G).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80545; File No. SR–IEX–2017–03]

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Amend IEX Rule 16.135 To Adopt Generic Listing Standards for Managed Fund Shares

April 27, 2017.

I. Introduction

On January 19, 2017, Investors Exchange LLC (''IEX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend IEX Rule 16.135 to adopt generic listing standards for Managed Fund Shares. The proposed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

rule change was published for comment in the **Federal Register** on February 8, 2017.[3] On March 16, 2017, the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.[4] On March 21, 2017, IEX filed Amendment No. 1 to the proposed rule change.[5] The Commission has received no comments on the proposal. The Commission is publishing this notice to solicit comments on Amendment No. 1 from interested persons and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description of the Proposed Rule Change

The Exchange proposes to adopt generic listing criteria and continued listing standards for Managed Fund Shares. The Exchange represents that the proposed rule change is substantially identical to Nasdaq Rule 5735.[6]

A. Proposed Generic Listing Criteria

IEX proposes generic listing criteria that would permit the Exchange to list and trade Managed Fund Shares pursuant to Rule 19b–4(e),[7] rather than by filing a proposed rule change under Section 19(b) of the Act.[8] The Exchange's listing standards establish requirements for the various types of assets that may be held in the portfolio of a generically listed, actively managed exchange traded fund (''Portfolio'').

1. Equity Components of the Portfolio

Proposed IEX Rule 16.135(b)(1)(A) establishes the criteria applicable to the equity securities included in a Portfolio. Equity securities include the following kinds of securities: U.S. Component Stock (defined in IEX Rule 16.105); Non-U.S. Component Stock, (defined in IEX Rule 16.105); Exchange Traded Derivative Securities (defined in proposed IEX Rule 16.135(c)(6)); [9] Linked Securities (defined in IEX Rule 16.110); and each of the equivalent security types listed on another national securities exchange. Additionally, proposed IEX Rule 16.135(b)(1)(A) provides that no more than 25% of the equity weight of the Portfolio can include leveraged or inverse-leveraged Exchange Traded Derivative Securities or Linked Securities and that, to the extent a Portfolio includes convertible securities, the equity securities into which such securities are converted must meet the criteria of proposed IEX Rule 16.135(b)(1)(A) after converting.

Proposed IEX Rule 16.135(b)(1)(A)(i) requires that U.S. Component Stocks (except as mentioned below) meet the following criteria initially and on a continuing basis:

(1) Component stocks (excluding Exchange Traded Derivative Securities and Linked Securities) that in the aggregate account for at least 90% of the equity weight of the Portfolio (excluding Exchange Traded Derivative Securities and Linked Securities) each shall have a minimum market value of at least $75 million;

(2) Component stocks (excluding Exchange Traded Derivative Securities and Linked Securities) that in the aggregate account for at least 70% of the equity weight of the Portfolio (excluding Exchange Traded Derivative Securities and Linked Securities) each shall have a minimum monthly trading volume of 250,000 shares, or minimum notional volume traded per month of $25,000,000, averaged over the previous six months;

(3) The most heavily weighted component stock (excluding Exchange Traded Derivative Securities and Linked Securities) must not exceed 30% of the equity weight of the Portfolio, and, to the extent applicable, the five most heavily weighted component stocks (excluding Exchange Traded Derivative Securities and Linked Securities) must not exceed 65% of the equity weight of the Portfolio;

(4) Where the equity portion of the Portfolio does not include Non-U.S. Component Stocks, the equity portion of the Portfolio shall include a minimum of 13 component stocks; provided, however, that there would be no minimum number of component stocks if (a) one or more series of Exchange Traded Derivative Securities or Linked Securities constitute, at least in part, components underlying a series of Managed Fund Shares, or (b) one or more series of Exchange Traded Derivative Securities or Linked Securities account for 100% of the equity weight of the Portfolio of a series of Managed Fund Shares;

(5) Except as provided in proposed IEX Rule 16.135(b)(1)(A)(i), equity securities in the Portfolio must be U.S. Component Stocks listed on a national securities exchange and must be NMS Stocks as defined in Rule 600 of Regulation NMS; and

(6) American Depositary Receipts (''ADRs'') may be exchange traded or non-exchange traded, but no more than 10% of the equity weight of the Portfolio shall consist of non-exchange traded ADRs.

Proposed IEX Rule 16.135(b)(1)(A)(ii) requires that Non-U.S. Component Stocks must meet the following criteria initially and on a continuing basis:

(1) Non-U.S. Component Stocks each shall have a minimum market value of at least $100 million;

(2) Non-U.S. Component Stocks each shall have a minimum global monthly trading volume of 250,000 shares, or minimum global notional volume traded per month of $25,000,000, averaged over the last six months;

(3) The most heavily weighted Non-U.S. Component Stock shall not exceed 25% of the equity weight of the Portfolio, and, to the extent applicable, the five most heavily weighted Non-U.S. Component Stocks shall not exceed 60% of the equity weight of the Portfolio;

(4) Where the equity portion of the Portfolio includes Non-U.S. Component Stocks, the equity portion of the Portfolio shall include a minimum of 20 component stocks; provided, however, that there shall be no minimum number of component stocks if (a) one or more series of Exchange Traded Derivative Securities or Linked Securities constitute, at least in part, components

[3] *See* Securities Exchange Act Release No. 79940 (February 2, 2017), 82 FR 9858.

[4] *See* Securities Exchange Act Release No. 80257, 82 FR 14779 (Mar. 22, 2017). (designating May 9, 2017 as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change).

[5] In Amendment No. 1, the Exchange proposes to add certain continued listing requirements for Managed Fund Shares based on those adopted by the Nasdaq Stock Market LLC (''Nasdaq''). The Exchange also makes technical changes to the requirements in IEX Rule 16.135 regarding firewalls and written surveillance procedures. Amendment No. 1 is available at: *https://www.sec.gov/comments/sr-iex-2017-03/iex201703-1708027-150143.pdf.*

[6] *See* Amendment No. 1, *supra* note 5, at 33.

[7] *See* 17 CFR 240.19b–4(e). Rule 19b–4(e) permits self-regulatory organizations (''SROs'') to list and trade new derivative securities products that comply with existing SRO trading rules, procedures, surveillance programs, and listing standards, without submitting a proposed rule change under Section 19(b). *See* Securities Exchange Act Release No. 40761 (Dec. 8, 1998), 63 FR 70952 (Dec. 22, 1998).

[8] The Exchange would file separate proposed rule changes before the listing and trading of Managed Fund Shares that do not satisfy the proposed generic listing criteria. *See* proposed IEX Rule 16.135(b)(1).

[9] Proposed IEX Rule 16.135(c)(6) defines ''Exchange Traded Derivative Securities'' as the securities described in IEX Rules 16.105(a) (Portfolio Depository Receipts); 16.105(b) (Index Fund Shares); 16.120 (Trust Issued Receipts); 16.111(d) (Commodity-Based Trust Shares); 16.111(e) (Currency Trust Shares); 16.111(f) (Commodity Index Trust Shares); 16.111(g) (Commodity Futures Trust Shares); 16.111(h) (Partnership Units); 16.111(i) (Trust Units); 16.135 (Managed Fund Shares); and 16.111(j) (Managed Trust Securities).

underlying a series of Managed Fund Shares, or (b) one or more series of Exchange Traded Derivative Securities or Linked Securities account for 100% of the equity weight of the Portfolio of a series of Managed Fund Shares; and

(5) Each Non-U.S. Component Stock shall be listed and traded on an exchange that has last-sale reporting.

2. Fixed Income Components of the Portfolio

Proposed IEX Rule 16.135(b)(1)(B) establishes criteria for fixed income securities that are included in a Portfolio. Fixed income securities are debt securities that are notes, bonds, debentures, or evidence of indebtedness that include, but are not limited to, U.S. Department of Treasury securities (''Treasury Securities''), government-sponsored entity securities (''GSE Securities''), municipal securities, trust preferred securities, supranational debt and debt of a foreign country or a subdivision thereof, investment grade and high yield corporate debt, bank loans, mortgage and asset backed securities, and commercial paper.[10] To the extent that a Portfolio includes convertible securities, the fixed income securities into which such securities are converted shall meet the criteria of proposed IEX Rule 16.135(b)(1)(B) after converting.[11]

Under proposed IEX Rule 16.135(b)(1)(B), fixed income securities that are part of a Portfolio must satisfy the following criteria initially and on a continuing basis:

(1) Components that in the aggregate account for at least 75% of the fixed income weight of the Portfolio must each have a minimum original principal amount outstanding of $100 million or more;

(2) No component fixed-income security (excluding Treasury Securities and GSE Securities) shall represent more than 30% of the fixed income weight of the Portfolio, and the five most heavily weighted fixed income securities in the Portfolio (excluding Treasury Securities and GSE Securities) shall not in the aggregate account for more than 65% of the fixed income weight of the Portfolio;

(3) A Portfolio that includes fixed income securities (excluding exempted securities) shall include a minimum of 13 non-affiliated issuers; provided, however, that there shall be no minimum number of non-affiliated issuers required for fixed income securities if at least 70% of the weight of the Portfolio consists of equity securities as described in IEX Rule 16.135(b)(1)(A);

(4) Component securities that in aggregate account for at least 90% of the fixed income weight of the Portfolio must be: (a) From issuers that are required to file reports pursuant to Sections 13 and 15(d) of the Act; (b) from issuers each of which has a worldwide market value of its outstanding common equity held by non-affiliates of $700 million or more; (c) from issuers each of which has outstanding securities that are notes, bonds, debentures, or evidence of indebtedness having a total remaining principal amount of at least $1 billion; (d) exempted securities as defined in Section 3(a)(12) of the Act; or (e) from issuers that are a government of a foreign country or a political subdivision of a foreign country; and

(5) Non-agency, non-GSE, and privately issued mortgage-related and other asset-backed securities shall not account, in the aggregate, for more than 20% of the weight of the fixed income portion of the Portfolio.

3. Cash and Cash Equivalent Portfolio Components

Proposed IEX Rule 16.135(b)(1)(C) provides that a Portfolio may include cash and cash equivalents. Cash equivalents are defined as short-term instruments with maturities of less than three months.[12] The Exchange defines short-term instruments to include the following: (1) U.S. Government securities, including bills, notes, and bonds differing as to maturity and rates of interest, which are either issued or guaranteed by the U.S. Treasury or by U.S. Government agencies or instrumentalities; (2) certificates of deposit issued against funds deposited in a bank or savings and loan association; (3) bankers' acceptances, which are short-term credit instruments used to finance commercial transactions; (4) repurchase agreements and reverse repurchase agreements; (5) bank time deposits, which are monies kept on deposit with banks or savings and loan associations for a stated period of time at a fixed rate of interest; (6) commercial paper, which are short-term unsecured promissory notes; and (7) money market funds.[13] The Exchange does not propose to limit to the amount of cash or cash equivalents that may be held in a Portfolio.[14]

4. Derivatives in the Portfolio

Proposed IEX Rule 16.135(b)(1)(D) establishes criteria for the portion of a Portfolio that consists of listed derivatives, such as futures, options, and swaps overlying commodities, currencies, financial instruments (*e.g.,* stocks, fixed income securities, interest rates, and volatility), or a basket or index of any of the foregoing. The Exchange does not propose to limit the percentage of a Portfolio that may be composed of such holdings, provided that, in the aggregate, at least 90% of the weight of holdings in listed derivatives (calculated using the aggregate gross notional value) must, on both an initial and continuing basis, consist of futures, options, and swaps for which the Exchange may obtain information via the Intermarket Surveillance Group from other members or affiliates or for which the principal market is a market with which the Exchange has a comprehensive surveillance sharing agreement (''CSSA'').[15] Additionally, the aggregate gross notional value of listed derivatives based on any five or fewer underlying reference assets shall not exceed 65% of the weight of the Portfolio (including gross notional exposures), and the aggregate gross notional value of listed derivatives based on any single underlying reference asset shall not exceed 30% of the weight of the Portfolio (including gross notional exposures).[16]

Proposed IEX Rule 16.135(b)(1)(E) establishes a limit on over-the-counter (''OTC'') derivatives. Specifically, no more than 20% of the weight of the Portfolio may be invested in OTC derivatives.[17] For purposes of calculating this limitation, a Portfolio's investment in OTC derivatives will be calculated as the aggregate gross notional value of the OTC derivatives.[18]

Finally, proposed IEX Rule 16.135(b)(1)(F) provides that, to the extent that listed or OTC derivatives are used to gain exposure to individual equities and/or fixed income securities, or to indexes of equities and/or fixed income securities, the aggregate gross notional value of such exposure shall meet the criteria set forth in IEX Rules 16.135(b)(1)(A) and 16.135(b)(1)(B), respectively.

[10] *See* proposed IEX Rule 16.135(b)(1)(B).

[11] *See id.*

[12] *See* proposed IEX Rule 16.135(b)(1)(C).

[13] *See* proposed IEX Rule 16.135(b)(1)(C)(ii).

[14] *See* proposed IEX Rule 16.135(b)(1)(C)(i).

[15] *See* proposed IEX Rule 16.135(b)(1)(D)(i).

[16] *See* proposed IEX Rule 16.135(b)(1)(D)(ii).

[17] OTC derivatives include: forwards, options, and swaps overlying commodities, currencies, financial instruments (*e.g.,* stocks, fixed income securities, interest rates, and volatility), or a basket or index of any of the foregoing. *See* proposed IEX Rule 16.135(b)(1)(E).

[18] *See id.*

B. Other Proposed Changes to IEX Rule 16.135

With respect to proposals to list and trade shares of actively managed funds that do not satisfy the proposed generic listing criteria, proposed IEX Rule 16.135(b)(1) provides that statements or representations in those 19b–4s regarding the following constitute continued listing standards: (1) The description of the portfolio; (2) limitations on portfolio holdings or reference assets; (3) dissemination and availability of the reference asset or intraday indicative values; or (4) the applicability of IEX rules and surveillance procedures.

The Exchange also proposes to expand to definition of ''Disclosed Portfolio'' to require that the Web site for each series of Managed Fund Shares must disclose the following information, to the extent applicable: ticker symbol, CUSIP or other identifier, a description of the holding, identity of the asset upon which the derivative is based, the strike price for any options, the quantity of each security or other asset held as measured by select metrics, maturity date, coupon rate, effective date, market value, and percentage weight of the holding in the portfolio.[19]

Additionally, the Exchange proposes to amend the continued listing requirements in Rule 16.135(d)(2)(A) by changing the requirement that an Intraday Indicative Value (''IIV'') for Managed Fund Shares be widely disseminated by one or more major market data vendors at least every 15 seconds during the time when the Managed Fund Shares trade on the Exchange to a requirement that an IIV be widely disseminated by one or more major market data vendors at least every 15 seconds during the Regular Market Session, as defined in IEX Rule 1.160(gg).

The Exchange proposes to require that every issue of Managed Fund Shares have a stated investment objective and that it be adhered to under normal market conditions.[20]

Further, the Exchange also seeks to amend Rule 16.135(d)(2)(C) to provide that IEX will consider suspension of trading and will initiate delisting proceedings under the IEX Rule Series 14.500 with respect to a series of Managed Fund Shares (rather than only considering removing a series from listing) under the following new or revised circumstances:

1. If, following the initial twelve-month period after commencement of trading on IEX of a series of Managed Fund Shares, there are fewer than 50 beneficial holders of the series of Managed Fund Shares.

2. If an interruption to the dissemination of the value of the IIV persists past the trading day in which it occurred or is no longer calculated or available.

3. If the Disclosed Portfolio is not made available to all market participants at the same time.

4. If the series is not in compliance with any statements or representations included in the applicable rule proposal under Section 19(b) of the Act regarding: (a) The description of the portfolio or reference assets; (b) limitations on portfolio holdings or reference assets; (c) dissemination and availability of the reference asset or intraday indicative values; or (d) the applicability of IEX rules and surveillance procedures.

5. If any of the requirements of IEX Rule 16.135 are not continuously maintained.

Further, the Exchange proposes to amend Rule 16.135(g) to provide that, if an investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, the investment adviser must erect and maintain a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio.

III. Discussion and Commission's Findings

After careful review, the Commission finds that the Exchange's proposal to amend IEX Rule 16.135 to, among other things, adopt generic listing criteria and continued listing requirements, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.[21] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[22] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

IEX's proposal is substantively identical with respect to Managed Fund Shares to proposals recently approved by the Commission (''Prior Orders'').[23] Accordingly, for the reasons discussed in Prior Orders, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act[24] and the rules and regulations thereunder applicable to a national securities exchange.

In support of its proposal, the Exchange represents the following:

(1) Managed Fund Shares listed and traded on IEX will conform to the initial and continued listing criteria under Rule 16.135;

(2) The Exchange's surveillance procedures are adequate to continue to properly monitor the trading of the Managed Fund Shares in all trading sessions and to deter and detect violations of Exchange rules;[25]

(3) Prior to the commencement of trading of a particular series of Managed Fund Shares, the Exchange will inform its members in an information circular (''Circular'') of the special characteristics and risks associated with trading the Managed Fund Shares, including procedures for purchases and redemptions of Managed Fund Shares, suitability requirements under Rules 3.150 and 3.170, the risks involved in trading the Managed Fund Shares during the Pre-Market and Post-Market Sessions when an updated IIV will not be calculated or publicly disseminated, information regarding the IIV and the Disclosed Portfolio, prospectus delivery requirements, and other trading information;[26]

[19] *See* proposed IEX Rule 16.135(c)(2).

[20] *See* proposed IEX Rule 16.135(d)(1)(C). ''Normal market conditions'' includes, but is not limited to, the absence of trading halts in the applicable financial markets generally; operational issues (*e.g.,* systems failure) causing dissemination of inaccurate market information; or force majeure type events such as a natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance. *See* proposed IEX Rule 16.135(c)(5).

[21] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[22] 15 U.S.C. 78f(b)(5).

[23] *See* Securities Exchange Act Release Nos. 78918 (Sep. 23, 2016), 81 FR 67033 (Sep. 29, 2016) (SR–NASDAQ–2016–104); 78396 (Jul. 22, 2016), 81 FR 49698 (Jul. 28, 2016) (SR–BATS–2015–100); and 78397 (Jul. 22, 2016), 81 FR 49320 (Jul. 27, 2016) (SR–NYSEArca-2015–110) (orders approving generic listing standards for Managed Fund Shares). *See also* Securities Exchange Act Release Nos. 80189 (Mar. 9, 2017), 82 FR 13889 (Mar. 15, 2017) (SR–NYSEArca–2017–01); 80169 (Mar. 7, 2017), 82 FR 13536 (Mar. 13, 2017) (SR–BatsBZX–2016–80); and 79784 (Jan. 12, 2017), 82 FR 6664 (Jan. 19, 2017) (SR–NASDAQ–2016–135) (orders approving certain continued listing standards).

[24] 15 U.S.C. 78f(b)(5).

[25] Specifically, the Exchange intends to utilize its existing surveillance procedures applicable to derivative products, which will include Managed Fund Shares, to monitor trading in the Managed Fund Shares.

[26] In addition, the Circular will disclose that the Managed Fund Shares are subject to various fees

Continued

(4) The issuer of a series of Managed Fund Shares will be required to comply with Rule 10A–3 under the Act for the initial and continued listing of Managed Fund Shares, as provided under the IEX Rule Series 14.400;

(5) The Exchange, on a periodic basis and no less than annually, will review issues of Managed Fund Shares generically listed pursuant to Rule 16.135 and will provide a report to the Regulatory Oversight Committee of the Exchange's Board of Directors regarding the Exchange's findings;

(6) The Exchange will provide the Commission staff with a report each calendar quarter that includes the following information for issues of Managed Fund Shares listed during such calendar quarter under Rule 16.135(b)(1): (a) Trading symbol and date of listing on the Exchange; (b) the number of active authorized participants and a description of any failure of an issue of Managed Fund Shares or of an authorized participant to deliver shares, cash, or cash and financial instruments in connection with creation or redemption orders; and (c) a description of any failure of an issue of Managed Fund Shares to comply with Rule 16.135;

(7) Prior to listing pursuant to proposed Rule 16.135(b)(1), an issuer would be required to represent to the Exchange that it will advise the Exchange of any failure by a series of Managed Fund Shares to comply with the continued listing requirements;

(8) Pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements; and

(9) If a managed fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under IEX Rule Series 14.500.

This approval order is based on all of the Exchange's representations, including those set forth above and in Amendment No. 1. For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act [27] and the rules and regulations thereunder applicable to a national securities exchange.

and expenses, as described in the applicable registration statement, and will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. Further, the Circular will disclose that the net asset value for the Managed Fund Shares will be calculated after 4 p.m., ET, each trading day.

[27] 15 U.S.C. 78f(b)(5).

IV. Accelerated Approval of Amendment No. 1

As noted above, in Amendment No. 1, the Exchange proposed to adopt certain continued listing requirements for Managed Fund Shares. The Commission believes that the changes to the Managed Fund Shares listing standard proposed in Amendment No. 1: (1) Clarify how the Exchange will interpret and administer its listing requirements; (2) make Managed Fund Shares listed on the Exchange less susceptible to manipulation by adding the firewall provision discussed above; and (3) enhance consistency between the Exchange's Managed Fund Shares listing criteria and the requirements for Managed Fund Shares recently adopted by other national securities exchanges. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act, to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

V. Solicitation of Comments on Amendment No. 1

Interested persons are invited to submit written data, views, and arguments concerning whether Amendment No. 1 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–IEX–2017–03 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–IEX–2017–03. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–IEX–2017–03 and should be submitted on or before May 24, 2017.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[28] that the proposed rule change (SR–IEX–2017–03), as modified by Amendment No. 1, be, and it hereby is, approved on an accelerated basis.[29]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.

Eduardo A. Aleman,

Assistant Secretary.

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BILLING CODE 8011–01–P

[28] 15 U.S.C. 78s(b)(2).

[29] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80546; File No. SR–FICC–2017–803]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of No Objection To Advance Notice Filing To Establish the Centrally Cleared Institutional Triparty Service and Make Other Changes

April 27, 2017.

On March 9, 2017, Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') advance notice SR–FICC–2017–803 (''Advance Notice'') pursuant to Section 806(e)(1) of the Payment, Clearing, and Settlement Supervision Act of 2010 (''Clearing Supervision Act'') [1] and Rule 19b–

[1] 12 U.S.C. 5465(e)(1). The Financial Stability Oversight Council designated FICC a systemically important financial market utility on July 18, 2012. Financial Stability Oversight Council 2012 Annual Report, Appendix A, *http://www.treasury.gov/initiatives/fsoc/Documents/2012%20Annual%20Report.pdf.* Therefore, FICC is required to comply with the Clearing Supervision Act and file advance notices with the Commission. 12 U.S.C. 5465(e).

4(n)(1)(i) [2] under the Securities Exchange Act of 1934 (''Exchange Act'').[3] The Advance Notice was published for comment in the **Federal Register** on April 7, 2017.[4] Although the Commission received no comments to the Advance Notice, it received one comment letter [5] to the Proposed Rule Change in support of the proposal.[6] This publication serves as notice that the Commission does not object to the changes set forth in the Advance Notice.

I. Description of the Advance Notice

Repurchase agreement (''repo'') transactions involve the sale of securities along with an agreement to repurchase the securities on a later date. Bilateral repo transactions involve a cash lender (*e.g.,* a money market mutual fund, pension fund, or other entity with funds available for lending) and a cash borrower (typically a broker-dealer, hedge fund, or other entity seeking to finance securities that can be used to collateralize the loan). In the opening leg of the repo transaction, the cash borrower receives cash in exchange for securities equal in value to the amount of cash received, plus a haircut. In the closing leg of the repo transaction, the cash borrower pays back the cash plus interest in exchange for the securities posted as collateral. In tri-party repo transactions, a clearing bank tri-party agent provides to both the cash lender and the cash borrower certain operational, custodial, collateral valuation, and other services to facilitate the repo transactions. For example, the tri-party agent may facilitate and record the exchange of cash and securities on a book-entry basis for each of the counterparties to the repo transaction, as well as effectuating the collection and transfer of collateral that may be required under the terms of the repo transaction. Cash lenders use tri-party repos as investments that offer liquidity maximization, principal protection, and a small positive return, while cash borrowers rely on them as a major source of short-term funding.[7]

FICC currently provides central clearing to a segment of the tri-party repo market through its general collateral finance repo service (''GCF Repo ® Service'').[8] The GCF Repo Service is available to sell-side entities, such as dealers, that enter into tri-party repo transactions, in GCF Repo Securities, with each other.[9]

The Advance Notice is a proposal by FICC to broaden the pool of entities that would be eligible to submit tri-party repo transactions for central clearing at FICC. Specifically, FICC proposes to amend its Government Securities Division (''GSD'') Rulebook (''GSD Rules'') [10] to establish the ''Centrally Cleared Institutional Tri-Party Service'' or the ''CCIT™ Service.'' [11] The proposed CCIT Service would allow the submission of tri-party repo transactions in GCF Repo Securities between GSD Netting Members [12] that participate in the GCF Repo Service and institutional counterparties (other than registered investment companies (''RICs'') under the Investment Company Act of 1940, as amended),[13] where the institutional counterparties are the cash lenders in the transactions.

To effectuate the proposed CCIT Service, FICC proposes to create a new limited service membership category in GSD for institutional cash lenders. These new members would be referred to as CCIT members, and the GSD membership provisions that apply to the CCIT members would be addressed in proposed GSD Rule 3B. These new membership provisions include: [14]

- Membership eligibility criteria, including minimum financial requirements, operational capabilities, and opinions of counsel;
- joint account ownership, in which one authorized entity would act as agent for two or more CCIT Members;
- membership application processes, including document provision and disclosure requirements, operational testing requirements, reporting requirements, FATCA compliance certification requirements,[15] and the procedures for denying membership;
- membership agreement terms describing rights and obligations;
- procedures for the voluntary termination of CCIT membership; and
- ongoing membership requirements, including (i) annual financial and other disclosure requirements; (ii) operational testing requirements and related reporting requirements; (iii) notification of GSD rule non-compliance; (iv) penalties for GSD rule non-compliance; (v) mandatory assurances in the event that FICC has reason to believe a member may fall into GSD rule non-compliance; (vi) requirements to comply with applicable tax, money laundering, and sanctions laws; (vii) audit provisions allowing FICC to access relevant books and records; and (viii) financial/operational monitoring.

In addition to membership provisions, proposed Rule 3B also would set forth the applicable risk management provision relating to the new limited

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[2] 17 CFR 240.19b–4(n)(1)(i).

[3] 15 U.S.C. 78s(b)(1).

[4] Securities Exchange Act Release No. 80361 (April 3, 2017), 82 FR 17053 (April 7, 2017) (SR–FICC–2017–803) (''Notice''). FICC also filed a proposed rule change with the Commission pursuant to Section 19(b)(1) of the Exchange Act and Rule 19b–4 thereunder, seeking approval of changes to its rules necessary to implement the proposal. 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b–4, respectively. The proposed rule change was published for comment in the **Federal Register** on March 30, 2017. Securities Exchange Act Release No. 80303 (March 24, 2017), 82 FR 15749 (March 30, 2017) (SR–FICC–2017–803).

[5] *See* letter from Thomas Wipf, Chief Financial Officer, Morgan Stanley & Co. LLC, dated April 19, 2017, to Eduardo A. Aleman, Assistant Secretary, Commission, *available at https://www.sec.gov/comments/sr-ficc-2017-005/ficc2017005.htm.*

[6] Because the proposal contained in the Advance Notice was also filed as the Proposed Rule Change, *see supra* note 3, the Commission is considering any comment received on the Proposed Rule Change also to be a comment on the Advance Notice.

[7] *See* Federal Reserve Bank of New York, Tri-Party Repo Infrastructure Reform, *https://www.newyorkfed.org/banking/tpr_infr_reform.html* (last visited Mar. 6, 2017).

[8] The term ''GCF Repo'' is a registered trademark of FICC. The GCF Repo Service is a service offered by FICC to compare, net, and settle general collateral repos. Notice, 82 FR at 17053.

[9] GCF Repo Securities are securities issued or guaranteed by the United States, a U.S. government agency or instrumentality, a U.S. government-sponsored corporation (or otherwise approved by FICC's Board of Directors), and such securities are only eligible for submission to FICC in connection with the comparison, netting and/or settlement of repo transactions involving generic CUSIP numbers (*i.e.,* identifying numbers established for a category of securities, as opposed to a specific security). Notice, 82 FR at 17053.

[10] *Available at http://www.dtcc.com/legal/rules-and-procedures.*

[11] CCIT is a trademark of The Depository Trust & Clearing Corporation, of which FICC is a subsidiary. FICC defines ''Centrally Cleared Institutional Tri-Party Service'' and ''CCIT Service'' as ''the service offered by the Corporation to clear institutional tri-party repurchase agreement transactions, as more fully described in Rule 3B.'' Proposed GSD Rule 1, Definitions.

[12] The term ''Netting Member'' is defined as a member of FICC's Comparison System (*i.e.,* the system of reporting, validating, and matching the long and short sides of securities trades to ensure that the details of such trades are in agreement between the parties) and FICC's Netting System (*i.e.,* the system for aggregating and matching offsetting obligations resulting from trades). GSD Rules, *supra* note 8.

[13] 15 U.S.C. 80a–1 *et seq.* According to FICC, the legal ability of such registered investment companies to participate in the proposed CCIT Service is uncertain in light of applicable regulatory requirements under the Investment Company Act of 1940 (including, for example, liquid asset requirements and counterparty diversification requirements).

[14] For additional discussion of the membership provisions set forth in proposed GSD Rule 3B, *see also* Notice, 82 FR at 17054–64.

[15] FATCA is the Foreign Account Tax Compliance Act, 26 U.S.C. 1471 *et seq.* FATCA compliance means that an ''. . . FFI [foreign financial institution] Member has qualified under such procedures promulgated by the Internal Revenue Service . . . to establish exemption from withholding under FATCA such that [FICC] would not be required to withhold [anything] under FATCA . . . . '' GSD Rules 1, *supra* note 3.

service membership category, including: [16]

- Non-mutualized loss allocation obligations of CCIT members, including FICC's perfected security interest in each CCIT member's underlying repo securities;
- a rules-based committed liquidity facility for CCIT members, in which CCIT members that have outstanding CCIT transactions with a defaulting member would be required to enter into CCIT master repurchase agreement transactions with FICC for specified periods of time;
- uncommitted liquidity repos between CCIT members and FICC; and
- application of certain other GSD Rules (*e.g.,* comparison, netting, settlement, default, and other applicable provisions) to CCIT members and transactions.

In addition to the proposed changes to the GSD Rules related to the proposed CCIT Service, the Advance Notice also contains other changes to the GSD Rules, unrelated to the CCIT proposal. These non-CCIT related changes generally are intended to update the GSD Rules and provide additional specificity, clarity, and transparency for members that rely on them.[17] These non-CCIT related proposed rule changes include the following:

- Clarifying that Comparison-Only Members must conform to FICC's operational conditions and requirements; [18]
- clarifying the point of time in which a member is required to notify FICC that the member is no longer in compliance with a relevant membership qualification and standard;
- providing that a member's written notice of its membership termination is not effective until accepted by FICC;
- requiring all GCF Repo transactions to be fully collateralized by 9:00 a.m. New York Time;
- prohibiting a member that receives collateral in the GCF Repo process from withdrawing the securities or cash collateral received;
- specifying the steps that members must take in the event of FICC's default so that FICC may determine the net amount owed by or to each member;
- reflecting FICC's current practice of annual study and evaluation of FICC's internal accounting control system; and
- correcting several grammatical and out-of-date cross-references.

In addition to the proposed changes listed above, the Advance Notice also includes a proposal for a non-CCIT related rule change that would provide FICC with access to the books and records of a RIC Netting Member's controlling management. The change is intended to enable FICC to determine whether the RIC has sufficient financial resources and monitor compliance with FICC's financial requirements on an ongoing basis.

II. Discussion of Commission Findings

Although the Clearing Supervision Act does not specify a standard of review for an advance notice, its stated purpose is instructive: To mitigate systemic risk in the financial system and promote financial stability by, among other things, promoting uniform risk management standards for systemically important financial market utilities and strengthening the liquidity of systemically important financial market utilities.[19] Section 805(a)(2) of the Clearing Supervision Act authorizes the Commission to prescribe risk management standards for the payment, clearing, and settlement activities of designated clearing entities and financial institutions engaged in designated activities for which it is the Supervisory Agency or the appropriate financial regulator.[20] Section 805(b) of the Clearing Supervision Act [21] states that the objectives and principles for the risk management standards prescribed under Section 805(a) shall be to:

- Promote robust risk management;
- promote safety and soundness;
- reduce systemic risks; and
- support the stability of the broader financial system.

The Commission has adopted risk management standards under Section 805(a)(2) of the Clearing Supervision Act [22] and Section 17A of the Exchange Act (''Clearing Agency Standards'').[23] The Clearing Agency Standards require registered clearing agencies to establish, implement, maintain, and enforce written policies and procedures that are reasonably designed to meet certain minimum requirements for their operations and risk management practices on an ongoing basis.[24] Therefore, it is appropriate for the Commission to review proposed changes in advance notices against the objectives and principles of these risk management standards as described in Section 805(b) of the Clearing Supervision Act and in the Clearing Agency Standards.[25]

A. Consistency With Section 805(b) of the Clearing Supervision Act

As discussed below, the Commission believes that the changes proposed in the Advance Notice are consistent with Section 805(b) of the Clearing Supervision Act because they (i) are designed to reduce systemic risk, (ii) are designed to support the stability of the financial system, (iii) are designed to promote robust risk management, and (iv) are consistent with promoting safety and soundness.

When considering the CCIT Service in its entirety, the Commission believes that the proposal could help to reduce systemic risk presented by FICC and a tri-party repo market member default, which in turn could help support the stability of the broader financial system. The CCIT Service would make the risk-reducing benefits of central clearing available to a wider range of types of repo transactions while at the same time ensuring that FICC is able to effectively manage the additional financial risk exposure. For example, as described above, the CCIT Service would enable a greater number of tri-party repo transactions to be eligible for netting and subject to guaranteed settlement, novation, and independent risk management through FICC, which would help decrease the settlement and operational risk of such transactions relative to those made outside of FICC, enhancing the stability of the tri-party repo market. Furthermore, by providing central clearing to a greater number of tri-party repo transactions, the CCIT Service would permit FICC to centralize and control the liquidation of a greater number of such positions in the event of a Netting Member's default, which in turn would help protect against the risk that an uncoordinated liquidation of the positions by multiple counterparties to a defaulting firm would cause a fire sale that destabilizes the broader financial system. Therefore, the Commission believes that the CCIT Service would help reduce systemic risks and support

[16] For additional discussion of the risk management provisions set forth in proposed GSD Rule 3B, *see also* Notice, 82 FR at 17055–64.

[17] For additional description and explanation of the non-CCIT-related changes included in the Advance Notice, *see* Notice, 82 FR at 17054–64.

[18] GSD Members may be either Comparison-Only Members or Netting Members. Comparison-Only Members are members of the GSD Comparison System, which is the GSD system for reporting, validating, and in some cases, matching of securities trades. Netting Members are members of both the GSD Comparison System and the GSD Netting System, which is the GSD system for aggregating and matching offsetting obligations resulting from securities trades. Pursuant to GSD Rule 2A, FICC may require an entity to be a Comparison-Only Member for a period of time (during which FICC assess the entity's operational soundness) before the entity becomes eligible to apply for netting membership.

[19] 12 U.S.C. 5461(b).

[20] 12 U.S.C. 5464(a)(2).

[21] 12 U.S.C. 5464(b).

[22] 12 U.S.C. 5464(a)(2).

[23] *See* 17 CFR 240.17Ad–22.

[24] *Id.*

[25] 12 U.S.C. 5464(b).

the stability of the financial system, consistent with Section 805(b) of the Clearing Supervision Act.

The Commission also believes that the CCIT Service designed by FICC is consistent with promoting robust risk management and safety and soundness at FICC and to the tri-party repo market. The CCIT Service includes certain risk management tools that facilitate FICC's management of credit, market, and liquidity risk arising from becoming a central counterparty to the new repo positions coming in via CCIT. For example, the CCIT Service would provide FICC with a perfected security interest in the underlying repo securities of a CCIT transaction and a built-in liquidity resource to support CCIT Service liquidity demands in the form of repo transactions under the CCIT Master Repurchase Agreement (''CCIT MRA'').[26] Each of these elements of the CCIT Service would help FICC manage certain risks presented by the potential default of a CCIT member. Specifically, the perfected security interest would enable FICC, in the event of a Netting Member's default, to access the defaulter's collateral for the purposes of managing potential risks, such as credit risk, that may arise from the default.

In addition, the CCIT Service would enable FICC to manage instances where a default results in liquidity demands for FICC within the CCIT Service that exceed the level of financial resources FICC might otherwise have on hand (such as the defaulter's collateral) at the time of the default by requiring CCIT Members to engage in repo transactions to provide cash as a liquidity resource in such instances. In addition to the risk management tools described above, the CCIT Service also would establish initial and ongoing financial responsibility and operational capacity requirements for CCIT members, as well as requirements that would be applicable to Netting Members with respect to their participation in the proposed CCIT Service. Collectively, these requirements would enable FICC to monitor the likelihood of a CCIT member default and limit its counterparty risk by (i) ensuring that FICC only takes on exposure to entities that are creditworthy counterparties; and (ii) enabling FICC to monitor the ongoing capability of these members to perform their obligations to FICC. For these reasons, the Commission believes that the CCIT Service would help promote robust risk management and safety and soundness at FICC, consistent with Section 805(b) of the Clearing Supervision Act.

In addition, the Commission believes that the CCIT Service is consistent with promoting robust risk management and safety and soundness to the tri-party repo market. As discussed above, the CCIT Service would make the risk-reducing benefits of central clearing available to a wider range of types of repo transactions, which would help decrease the settlement and operational risk of such transactions when made outside of FICC and thereby enhance stability for the tri-party repo market. Furthermore, the CCIT Service would enable a greater number of tri-party repo transactions to be subject to FICC's ability, in the event of a Netting Member's default, to centralize and control the liquidation of such positions at FICC, which in turn would help protect the tri-party repo market against the risk that a liquidation of the positions would cause a fire sale that destabilizes the broader financial system. Therefore, the Commission believes that the CCIT Service would help promote robust risk management and safety and soundness to the tri-party repo market, consistent with Section 805(b) of the Clearing Supervision Act.

B. Consistency With Rules 17Ad–22(e)(1), (e)(4), and (e)(18)

The Commission believes that the changes proposed in the Advance Notice are consistent with Rule 17Ad–22(e)(1) under the Act.[27] Rule 17Ad–22(e)(1) requires, in part, that FICC ''establish, implement, maintain and enforce written policies and procedures reasonably designed to . . . [p]rovide for a well-founded, clear, transparent and enforceable legal basis for each aspect of its activities.'' [28] As described above, FICC proposes a number of changes that are unrelated to the proposed CCIT Service and designed to make the GSD Rules more clear, consistent, and current for members that rely on them. The Commission believes that these non-CCIT related changes could make FICC's policies and procedures in the GSD Rules more clear, consistent, and transparent for members that rely on them, and therefore believes that the proposed changes would help support FICC's rules being clear and transparent, consistent with Rule 17Ad–22(e)(1), cited above.

The Commission believes that the changes proposed in the Advance Notice are consistent with Rule 17Ad–22(e)(4)(iii) under the Act.[29] Rule 17Ad–22(e)(4)(iii) requires, in part, that FICC ''establish, implement, maintain and enforce written policies and procedures reasonably designed to . . . [e]ffectively identify, measure, monitor, and manage its credit exposures to participants and those arising from [FICC's] payment, clearing, and settlement processes, including by . . . maintaining . . . financial resources at the minimum to enable [FICC] to cover a wide range of stress scenarios. . . .'' [30] As discussed above, the CCIT Service includes risk management tools, such as the perfected security interest and the CCIT MRA liquidity resource. The Commission believes that these risk management tools would help facilitate FICC's management of credit, market, and liquidity risk that would arise from becoming a central counterparty to the new repo positions coming in via the proposed CCIT Service. Accordingly, the Commission believes that the proposed changes to its policies and procedures in the GSD Rules are designed to help effectively manage FICC's exposure, including its credit exposure to participants, arising from its payment, clearing, and settlement processes for the proposed CCIT transactions by providing for financial resources to help cover a wide range of foreseeable stress scenarios, consistent with Rule 17Ad–22(e)(4)(iii), cited above.

The Commission also believes that the proposal is consistent with Rule 17Ad–22(e)(18) under the Act.[31] Rule 17Ad–22(e)(18) requires, in part, that FICC ''establish, implement, maintain and enforce written policies and procedures reasonably designed to . . . [e]stablish objective, risk-based, and publicly disclosed criteria for participation, which . . . require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the clearing agency, and monitor compliance with such participation requirements on an ongoing basis.'' [32]

In connection with the establishment of the proposed CCIT Service, FICC would include provisions in the GSD rules to incorporate membership standards, requiring, for example, ongoing financial responsibility and operational capacity requirements, as well as the requirements that would be applicable to Netting Members with respect to their participation in the proposed CCIT Service. The

[26] For additional details regarding the CCIT MRA, *see* Notice, 82 FR at 17060–61.

[27] 17 CFR 240.17Ad–22(e)(2).

[28] *Id.*

[29] 17 CFR 240.17Ad–22(e)(4)(iii).

[30] *Id.*

[31] 17 CFR 240.17Ad–22(e)(18).

[32] *Id.*

Commission believes that, by incorporating such requirements, FICC would establish in its policies and procedures objective, risk-based, and publicly disclosed criteria for participation in the CCIT Service, consistent with Rule 17Ad–22(e)(18).

Similarly, in connection with the proposed non-CCIT related change to provide FICC with access to the books and records of a RIC Netting Member's controlling management, FICC would be authorized to review the financial information of the RIC. Because this would enable FICC to determine whether the RIC has sufficient financial resources and monitor compliance with FICC's financial requirements on an ongoing basis, the Commission believes this requirement is consistent with Rule 17Ad–22(e)(18).

III. Conclusion

It is therefore noticed, pursuant to Section 806(e)(1)(I) of the Clearing Supervision Act,[33] that the Commission *does not object* to this advance notice proposal (SR–FICC–2017–803) and that FICC is *authorized* to implement the proposal as of the date of this notice or the date of an order by the Commission approving a proposed rule change that reflects rule changes that are consistent with this advance notice proposal (SR–FICC–2017–005), whichever is later.

By the Commission.

Brent J. Fields,

Secretary.

[FR Doc. 2017–08903 Filed 5–2–17; 8:45 am]

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[33] 12 U.S.C. 5465(e)(1)(I).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80541; File No. SR–NYSEArca–2017–48]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to the Listing and Trading of Shares of the Franklin Liberty Intermediate Municipal Opportunities ETF and Franklin Liberty Municipal Bond ETF Under NYSE Arca Equities Rule 8.600

April 27, 2017.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on April 24, 2017, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade shares of the Franklin Liberty Intermediate Municipal Opportunities ETF and Franklin Liberty Municipal Bond ETF (each a ''Fund'' and, collectively, the ''Funds'') under NYSE Arca Equities Rule 8.600 (''Managed Fund Shares''). The proposed change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade shares (''Shares'') of each Fund under NYSE Arca Equities Rule 8.600,[4] which governs the listing and trading of Managed Fund Shares.[5] The Shares will be offered by the Franklin Templeton ETF Trust (the ''Trust''), which is registered with the Commission as an open-end management investment company.[6] Each Fund is a series of the Trust.

The investment adviser to each Fund will be Franklin Advisers, Inc. (the ''Adviser''). Franklin Templeton Distributors, Inc. will serve as the distributor (the ''Distributor'') of each Fund's Shares on an agency basis. Franklin Templeton Services, LLC will serve as the administrator and State Street Bank and Trust Company will serve as the sub-administrator, custodian and transfer agent for each Fund.

Commentary .06 to Rule 8.600 provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio.[7] In addition,

[4] The Securities and Exchange Commission (''Commission'') has approved for Exchange listing and trading shares of actively managed funds that principally hold municipal bonds. *See, e.g.,* Securities Exchange Act Release Nos. 60981 (November 10, 2009), 74 FR 59594 (November 18, 2009) (SR–NYSEArca–2009–79) (order approving listing and trading of shares of the PIMCO Short-Term Municipal Bond Strategy Fund and PIMCO Intermediate Municipal Bond Strategy Fund); 79293 (November 10, 2016), 81 FR 81189 (November 17, 2016) (SR–NYSEArca–2016–107) (order approving listing and trading of shares of Cumberland Municipal Bond ETF under Rule 8.600). The Commission also has approved listing and trading on the Exchange of shares of the SPDR Nuveen S&P High Yield Municipal Bond Fund under Commentary .02 of NYSE Arca Equities Rule 5.2(j)(3). *See* Securities Exchange Act Release No. 63881 (February 9, 2011), 76 FR 9065 (February 16, 2011) (SR–NYSEArca–2010–120).

[5] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (''1940 Act'') organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

[6] The Trust is registered under the 1940 Act. On March 23, 2017, the Trust filed with the Commission an amendment to its registration statement on Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a) (''Securities Act''), and under the 1940 Act relating to the Funds (File Nos. 333–208873 and 811–23124) (''Registration Statement''). The description of the operation of the Trust and the Funds herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust, Franklin Advisers, Inc. and Franklin Templeton Distributors, Inc. under the 1940 Act. *See* Investment Company Act Release No. 30350 (Jan. 15, 2013) (File No. 812–14042) (''Exemptive Order'').

[7] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful

Commentary .06 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund's portfolio. The Adviser is not a registered broker-dealer but is affiliated with a broker-dealer. The Adviser has implemented and will maintain a ''fire wall'' with respect to such broker-dealer affiliate regarding access to information concerning the composition of and/or changes to each Fund's portfolio. In the event (a) the Adviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser to a Fund is a registered broker-dealer or becomes affiliated with a broker-dealer, the applicable adviser or sub-adviser will implement and maintain a fire wall with respect to its relevant personnel or broker-dealer affiliate regarding access to information concerning the composition and/or changes to a Fund's portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

Franklin Liberty Intermediate Municipal Opportunities ETF

Principal Investments

According to the Registration Statement, the investment objective of the Fund will be to achieve a high level of current income that is exempt from federal income taxes. Under normal market conditions,[8] the Fund will invest at least 80% of its net assets in municipal securities whose interest is free from federal income taxes, including the federal alternative minimum tax.

The Fund may invest in municipal securities rated in any rating category by U.S. nationally recognized rating services (or comparable unrated or short-term rated securities), including below investment grade and defaulted securities and securities of issuers that are, or are about to be, involved in reorganizations, financial restructurings, or bankruptcy (generally referred to as ''distressed debt''). Such investments typically involve the purchase of lower-rated or defaulted debt securities, comparable unrated debt securities, or other indebtedness (or participations in the indebtedness) of such issuers. Although the Adviser will search for investments across a large number of municipal securities that finance different types of projects, from time to time, based on economic conditions, the Fund may have significant positions in municipal securities that finance similar types of projects.

According to the Registration Statement, the Funds may invest in one or more of the following municipal securities (''Municipal Securities''):

- General obligation bonds, which are typically issued by states, counties, cities, towns and regional districts and backed by the issuer's pledge of its full faith, credit and taxing power for the payment of principal and interest.
- Revenue bonds, which are generally backed by the net revenue derived from a particular facility, group of facilities, or, in some cases, the proceeds of a special excise tax or other specific revenue source.
- Anticipation notes, including bond, revenue and tax anticipation notes, which are issued to provide interim financing of various municipal needs in anticipation of the receipt of other sources of money for repayment of the notes.
- Insured Municipal Securities, which are covered by insurance policies that guarantee the timely payment of principal and interest. When beneficial, a Fund may purchase insurance for an uninsured bond directly from a qualified municipal bond insurer, in which case a Fund pays the insurance premium directly to the insurance company.
- Municipal lease obligations, which generally are issued to support a government's infrastructure by financing or refinancing equipment or property acquisitions or the construction, expansion or rehabilitation of public facilities. A Fund may also gain exposure to municipal lease obligations through certificates of participation, which represent a proportionate interest in the payments under a specified lease or leases.
- Municipal Securities that are issued on a when-issued or delayed delivery basis.
- Variable and floating rate securities, including variable rate demand notes, municipal inflation protected securities, index-based floating rate securities, and auction rate securities, which have interest rates that change either at specific intervals from daily up to semi-annually, or whenever a benchmark rate changes.
- Pre-refunded bonds, which are outstanding debt securities that are not immediately callable (redeemable) by the issuer but have been ''pre-refunded'' by the issuer.
- Zero coupon bonds (including convertible and step coupon bonds) and deferred interest securities.
- Stripped securities, which are debt securities that have been transformed from a principal amount with periodic interest coupons into a series of zero coupon bonds, each with a different maturity date corresponding to one of the payment dates for interest coupon payments or the redemption date for the principal amount.
- Mandatory tender (mandatory put) Municipal Securities, which may be sold with a requirement that a holder of a security surrender the security to the issuer or its agent for cash at a date prior to the stated maturity.
- Callable securities, which give the issuer the right to redeem the security on a given date or dates (known as the call dates) prior to maturity.
- Tax-exempt commercial paper, which typically represents an unsecured short-term obligation (270 days or less) issued by a municipality.
- Tax-exempt or qualified private activity and industrial development revenue bonds, which are typically issued by or on behalf of public authorities to finance various privately operated facilities which are expected to benefit the municipality and its residents, such as business, manufacturing, housing, sports and pollution control, as well as public facilities such as airports, mass transit systems, ports and parking.

Franklin Liberty Municipal Bond ETF

Principal Investments

According to the Registration Statement, the investment objective of the Fund will be to achieve a high level of current income that is exempt from federal income taxes. Under normal market conditions, the Fund will invest at least 80% of its net assets in Municipal Securities whose interest is free from federal income taxes, including the federal alternative minimum tax.

Although the Adviser will search for investments across a large number of Municipal Securities that finance different types of projects, from time to time, based on economic conditions, the

for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[8] The term ''normal market conditions'' is defined in NYSE Arca Equities Rule 8.600(c)(5).

Fund may have significant positions in Municipal Securities that finance similar types of projects.

According to the Registration Statement, the Fund may invest in one or more of the Municipal Securities listed above. The Fund generally buys Municipal Securities rated, at the time of purchase, in one of the top four ratings categories by one or more U.S. nationally recognized rating services (or comparable unrated or short-term rated securities).[9]

Non-Principal Investments

According to the Registration Statement, while each Fund, under normal market conditions, will invest at least 80% of its net assets in Municipal Securities whose interest is free from federal income taxes, including the federal alternative minimum tax, each Fund may invest up to 20% of its net assets in the securities that pay interest that may be subject to the federal alternative minimum tax and, although not anticipated, in securities that pay taxable interest, as described below.

With respect to up to 20% of its net assets, each Fund may invest in bank obligations; [10] taxable commercial paper; [11] other investment companies,[12] including exchange-traded funds (''ETFs'');[13] U.S. government securities;[14] and unrated debt securities.[15]

The Franklin Liberty Intermediate Municipal Opportunities ETF may also invest in defaulted debt securities [16] and high-yield debt securities.[17]

Investment Restrictions

According to the Registration Statement, a Fund may invest up to 100% of its assets in temporary defensive investments, including cash, cash equivalents or other high quality short-term investments, such as short-term debt instruments, including U.S. government securities, high grade commercial paper, repurchase agreements, negotiable certificates of deposit, non-negotiable fixed time deposits, bankers acceptances, and other money market equivalents. In addition, with respect to each of the Funds, on a temporary basis, during periods of high cash inflows or outflows,[18] a Fund may depart from its principal investment strategies; for example, it may hold a higher than normal proportion of its assets in cash. During such periods, a Fund may not be able to achieve its investment objective. To the extent allowed by exemptions from and rules under the 1940 Act and a Fund's other investment policies and restrictions, the Adviser also may invest a Fund's assets in shares of one or more money market funds managed by the Adviser or its affiliates.

Each Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), consistent with Commission guidance. Each Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of a Fund's net assets are held in illiquid assets. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.[19]

Each Fund intends to qualify for and to elect treatment as a separate regulated investment company under Subchapter M of the Internal Revenue Code of 1986.[20]

Each Fund's investments will be consistent with its investment objective and will not be used to provide multiple returns of a benchmark or to produce leveraged returns. A Fund will not necessarily focus its investments in a particular state, and will not invest more than 15% of its total assets in Municipal Securities of any one state as discussed below.

[9] This limitation generally is applied at the time of purchase and a downgrade of a particular security below one of the top four ratings categories will not automatically cause the Fund to sell the security. The Adviser will, however, take such downgrade into account when analyzing the portfolio.

[10] Bank obligations include fixed, floating or variable rate certificates of deposit (CDs), letters of credit, time and savings deposits, bank notes and bankers' acceptances. CDs are negotiable certificates issued against funds deposited in a commercial bank for a definite period of time and earning a specified return. Time deposits are non-negotiable deposits that are held in a banking institution for a specified period of time at a stated interest rate. Savings deposits are deposits that do not have a specified maturity and may be withdrawn by the depositor at any time. Bankers' acceptances are negotiable drafts or bills of exchange normally drawn by an importer or exporter to pay for specific merchandise.

[11] Commercial paper is an unsecured, short-term loan to a corporation, typically for financing accounts receivable and inventory with maturities of up to 270 days. Each Fund may invest in taxable commercial paper only for temporary defensive purposes.

[12] Each Fund may invest in other investment companies to the extent permitted by the 1940 Act, Commission rules thereunder and exemptions thereto. Each Fund may also invest its cash balances in affiliated money market funds to the extent permitted by its investment policies and rules and exemptions granted under the 1940 Act.

[13] The ETFs in which a Fund may invest include Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3)); Portfolio Depositary Receipts (as described in NYSE Arca Equities Rule 8.100); and Managed Fund Shares (as described in NYSE Arca Equities Rule 8.600). Such ETFs all will be listed and traded in the U.S. on registered exchanges.

[14] U.S. government securities include obligations of, or guaranteed by, the U.S. federal government, its agencies, instrumentalities or sponsored enterprises. Some U.S. government securities are supported by the full faith and credit of the U.S. government. These include U.S. Treasury obligations and securities issued by the Government National Mortgage Association (GNMA). A second category of U.S. government securities are those supported by the right of the agency, instrumentality or sponsored enterprise to borrow from the U.S. government to meet its obligations. These include securities issued by Federal Home Loan Banks. A third category of U.S. government securities are those supported by only the credit of the issuing agency, instrumentality or sponsored enterprise. These include securities issued by the Federal National Mortgage Association (FNMA) and Federal Home Loan Mortgage Corporation (FHLMC).

[15] Debt securities or their issuers which are not rated by rating agencies, sometimes due to the size of or manner of the securities offering, the decision by one or more rating agencies not to rate certain securities or issuers as a matter of policy, or the unwillingness or inability of the issuer to provide the prerequisite information and fees to the rating agencies.

[16] Investments in securities of issuers that are, or are about to be, involved in reorganizations, financial restructurings, or bankruptcy (generally referred to as ''distressed debt'') typically involve the purchase of lower-rated or defaulted debt securities, comparable unrated debt securities, or other indebtedness of such issuers. The Franklin Liberty Municipal Bond ETF may not buy defaulted debt securities. However, the Franklin Liberty Municipal Bond ETF is not required to sell a debt security that has defaulted if the Adviser believes it is advantageous to continue holding the security.

[17] High-yield or lower-rated debt securities are securities that have been rated by Moody's or S&P below their top four rating categories (*e.g.,* BB or Ba and lower) and are considered below investment grade.

[18] ''Periods of high cash inflows or outflows,'' as used herein, mean rolling periods of seven calendar days during which inflows or outflows of cash, in the aggregate, exceed 10% of a Fund's net assets as of the opening of business on the first day of such periods.

[19] The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. *See* Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. *See also,* Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding ''Restricted Securities''); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N–1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. *See* Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a–7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the Securities Act).

[20] 26 U.S.C. 851.

Under normal market conditions, except for periods of high cash inflows or outflows,[21] each Fund will satisfy the following criteria. Each Fund will have a minimum of 35 Municipal Securities holdings. After a Fund has at least $100 million in assets, it will have a minimum of 75 Municipal Securities holdings. With respect to 75% of each Fund's total assets, no single Municipal Securities issuer will account for more than 3% of the weight of a Fund's portfolio. For the remaining portion of each Fund's assets, no single Municipal Securities issuer will account for more than 6% of the weight of a Fund's portfolio. Each Fund will limit its investments in Municipal Securities of any one state to 15% of a Fund's total assets and will be diversified among issuers in at least 10 states. Each Fund will limit its investments in Municipal Securities in any single sector to 25% of a Fund's total assets.[22] Pre-refunded bonds will be excluded from the above limits given that they have a high level of credit quality and liquidity.[23]

Application of Generic Listing Requirements

The Exchange is submitting this proposed rule change because the portfolios for the Funds will not meet all of the ''generic'' listing requirements of Commentary .01 to NYSE Arca Equities Rule 8.600 applicable to the listing of Managed Fund Shares. Each Fund's portfolio will meet all such requirements except for those set forth in Commentary .01(b)(1).[24]

The Exchange believes that it is appropriate and in the public interest to approve listing and trading of Shares of the Funds on the Exchange notwithstanding that the Funds would not meet the requirements of Commentary .01(b)(1) to Rule 8.600 in that the Funds' investments in Municipal Securities will be well-diversified. A Fund will not necessarily focus its investments in a particular state, and will not invest more than 15% of its total assets in Municipal Securities of any one state. As noted above, under normal market conditions, except for periods of high cash inflows or outflows,[25] each Fund will satisfy the following criteria. Each Fund will have a minimum of 35 Municipal Securities holdings. After a Fund has at least $100 million in assets, it will have a minimum of 75 Municipal Securities holdings. With respect to 75% of each Fund's total assets, no single Municipal Securities issuer will account for more than 3% of the weight of a Fund's portfolio. For the remaining portion of each Fund's assets, no single Municipal Securities issuer will account for more than 6% of the weight of a Fund's portfolio. Each Fund will limit its investments in Municipal Securities of any one state to 15% of a Fund's total assets and will be diversified among issuers in at least 10 states. Each Fund will limit its investments in Municipal Securities in any single sector to 25% of a Fund's total assets. As noted above, pre-refunded bonds will be excluded from the above limits given that they have a high level of credit quality and liquidity.

The Exchange believes that permitting Fund Shares to be listed and traded on the Exchange notwithstanding that less than 75% of the weight of a Fund's portfolio may consist of components with less than $100 million minimum original principal amount outstanding would provide the Funds with greater ability to select from a broad range of Municipal Securities, as described above, that would support a Fund's investment objective.

The Exchange believes that, notwithstanding that each Fund's portfolio may not satisfy Commentary .01(b)(1) to Rule 8.600, the Funds' portfolios will not be susceptible to manipulation. A Fund will not invest more than 15% of its total assets in Municipal Securities of any one state. In addition, each Fund's portfolio will be well-diversified in that each Fund will have a specified minimum number of Municipal Securities holdings and will be subject to percentage limitations on a Fund's total assets invested in Municipal Securities of individual issuers, states and sectors, as described above. The Exchange notes that, other than Commentary .01(b)(1) to Rule 8.600, each Fund's portfolio will meet all other requirements of Rule 8.600.

Creations and Redemptions

According to the Registration Statement, the Trust will issue and sell Shares of a Fund only in ''Creation Units'' in aggregations of 100,000 Shares per Creation Unit on a continuous basis through the Distributor or its agent, without a sales load, at a price based on a Fund's NAV next determined after receipt, on any ''Business Day,'' [26] of an order received by the Distributor or its agent in proper form. On days when the Exchange closes earlier than normal, a Fund may require orders to be placed earlier in the day.

In its discretion, the Adviser reserves the right to increase or decrease the number of a Fund's Shares that constitute a Creation Unit.

Creation of Fund Shares

The consideration for purchase of Creation Units of a Fund may consist of the ''Deposit Securities'' (*i.e.,* the in-kind deposit of a designated portfolio of securities (including any portion of such securities for which cash may be substituted)) and the Cash Component computed as described below. Together, the Deposit Securities and the Cash Component constitute the ''Fund Deposit,'' which will be applicable (subject to possible amendment or correction) to creation requests received in proper form. The Fund Deposit represents the minimum initial and subsequent investment amount for a Creation Unit of a Fund. Currently, a Fund's Shares generally will be offered in Creation Units solely for cash.

The ''Cash Component'' is an amount equal to the difference between the NAV of the Shares (per Creation Unit) and the ''Deposit Amount,'' which is an amount equal to the market value of the Deposit Securities, and serves to compensate for any differences between the NAV per Creation Unit and the Deposit Amount.

Each Fund's current policy is to accept cash in substitution for the Deposit Securities it might otherwise accept as in-kind consideration for the purchase of Creation Units. A Fund may, at times, elect to receive Deposit Securities (*i.e.,* the in-kind deposit of a designated portfolio of securities) and a Cash Component as consideration for

[21] *See* notes 8 and 18, *supra,* regarding the meaning of the terms ''normal market conditions'' and ''periods of high cash inflows or outflows,'' respectively.

[22] A Fund's investments in Municipal Securities will include investments in state and local (*e.g.,* county, city, town) Municipal Securities relating to such sectors as the following: Dedicated tax; public power; tax increment; toll road; port revenue; airport revenue; water revenue; sewer revenue; higher education (colleges and universities); wastewater revenue; school districts; and sales tax revenue.

[23] Pre-refunded bonds (also known as refunded or escrow-secured bonds) have a high level of credit quality and liquidity because the issuer ''pre-refunds'' the bond by setting aside in advance all or a portion of the amount to be paid to the bondholders when the bond is called. Generally, an issuer uses the proceeds from a new bond issue to buy high grade, interest bearing debt securities, including direct obligations of the U.S. government, which are then deposited in an irrevocable escrow account held by a trustee bank to secure all future payments of principal and interest on the pre-refunded bonds.

[24] Commentary .01(b)(1) to NYSE Arca Equities Rule 8.600 provides that components that in the aggregate account for at least 75% of the fixed income weight of the portfolio each shall have a minimum original principal amount outstanding of $100 million or more.

[25] *See* notes 8 and 17, *supra,* regarding the meaning of the terms ''normal market conditions'' and ''periods of high cash inflows or outflows,'' respectively.

[26] A ''Business Day'' with respect to each Fund is any day the Exchange is open for business.

the purchase of Creation Units. If a Fund elects to accept Deposit Securities, a purchaser's delivery of the Deposit Securities together with the Cash Component will constitute the ''Fund Deposit,'' which will represent the consideration for a Creation Unit of a Fund.

The identity and number of shares of the Deposit Securities and the amount of the Cash Component changes pursuant to changes in the composition of a Fund's portfolio and as rebalancing adjustments and corporate action events are reflected from time to time by the Adviser with a view to the investment objective of a Fund. The composition of the Deposit Securities and the amount of the Cash Component may also change in response to adjustments to the weighting or composition of the component securities constituting a Fund's portfolio.

Each Fund reserves the right to permit or require the substitution of a ''cash in lieu'' amount to be added to the Cash Component to replace any Deposit Security that may not be available in sufficient quantity for delivery or that may not be eligible for transfer through the facilities of Depository Trust Company (''DTC'') (''DTC Facilities'') or the clearing process through the Continuous Net Settlement System of the National Securities Clearing Corporation (''NSCC'') (''NSCC Clearing Process'') (as discussed below), or that the Authorized Participant is not able to trade due to a trading restriction. Each Fund also reserves the right to permit or require a ''cash in lieu'' amount in certain circumstances, including circumstances in which: (i) The delivery of the Deposit Security by the Authorized Participant would be restricted under applicable securities or other local laws; (ii) the delivery of the Deposit Security to the Authorized Participant would result in the disposition of the Deposit Security by the Authorized Participant becoming restricted under applicable securities or other local laws; or (iii) in certain other situations.

When partial or full cash purchases of Creation Units are available or specified for a Fund (currently, Creation Units of each Fund are generally offered solely for cash), they will be effected in essentially the same manner as in-kind purchases thereof. In the case of a partial or full cash purchase, the ''Authorized Participant'' (as defined below) must pay the cash equivalent of the Deposit Securities it would otherwise be required to provide through an in-kind purchase, plus the same Cash Component required to be paid by an in-kind purchaser.

To be eligible to place orders with the Distributor and to create a Creation Unit of a Fund, an entity must be: (i) A ''Participating Party,'' *i.e.,* a broker-dealer or other participant in the NSCC Clearing Process, or (ii) a DTC Participant, and, in either case, must have executed an agreement with the Distributor with respect to creations and redemptions of Creation Units (Authorized Participant Agreement). A Participating Party or DTC Participant who has executed an Authorized Participant Agreement is referred to as an ''Authorized Participant.'' All Shares of a Fund, however created, will be entered on the records of DTC in the name of Cede & Co. for the account of a DTC Participant.

An Authorized Participant must submit an irrevocable order to purchase Shares of a Fund, in proper form, generally before 4 p.m., Eastern time on any Business Day in order to receive that day's NAV. Creation Units may be purchased only by or through an Authorized Participant that has entered into an Authorized Participant Agreement with the Distributor.

An Authorized Participant must submit an irrevocable order to purchase Shares of a Fund, in proper form, generally before 4 p.m., Eastern time on any Business Day in order to receive that day's NAV.

Redemption of Fund Shares

Shares of a Fund may be redeemed by Authorized Participants only in Creation Units at their NAV next determined after receipt of a redemption request in proper form by the Distributor or its agent and only on a Business Day. A Fund will not redeem Shares in amounts less than Creation Units.

The Adviser will make available through the NSCC, prior to the opening of business on the Exchange on each Business Day, the designated portfolio of securities (including any portion of such securities for which cash may be substituted) that will be applicable (subject to possible amendment or correction) to redemption requests received in proper form on that day (''Fund Securities''), and an amount of cash as described below (''Cash Amount'') (if any). Such Fund Securities and the corresponding Cash Amount (each subject to possible amendment or correction) are applicable in order to effect redemptions of Creation Units of a Fund until such time as the next announced composition of the Fund Securities and Cash Amount is made available. Fund Securities received on redemption may not be identical to Deposit Securities that are applicable to creations of Creation Units under certain circumstances.

Unless cash redemptions are available or specified for a Fund, the redemption proceeds for a Creation Unit generally consist of Fund Securities, plus the Cash Amount, which is an amount equal to the difference between the NAV of the Shares being redeemed, as next determined after the receipt of a redemption request in proper form, and the value of Fund Securities, less a redemption transaction fee (as described below).

Each Fund may, in its sole discretion, substitute a ''cash in lieu'' amount to replace any Fund Security that may not be eligible for transfer through DTC Facilities or the NSCC Clearing Process or that the Authorized Participant is not able to trade due to a trading restriction. Each Fund also reserves the right to permit or require a ''cash in lieu'' amount in certain circumstances, including circumstances in which: (i) The delivery of a Fund Security to the Authorized Participant would be restricted under applicable securities or other local laws; (ii) the delivery of a Fund Security to the Authorized Participant would result in the disposition of the Fund Security by the Authorized Participant becoming restricted under applicable securities or other local laws; or (iii) in certain other situations. The amount of cash paid out in such cases will be equivalent to the value of the substituted security listed as a Fund Security. In the event that the Fund Securities have a value greater than the NAV of the Shares, a compensating cash payment equal to the difference is required to be made by or through an Authorized Participant by the redeeming shareholder. When partial or full cash redemptions of Creation Units are available or specified for a Fund (currently, Creation Units of each Fund are generally redeemed solely for cash), they will be effected in essentially the same manner as in-kind redemptions thereof. In the case of partial or full cash redemption, the Authorized Participant will receive the cash equivalent of the Fund Securities it would otherwise receive through an in-kind redemption, plus the same Cash Amount to be paid to an in-kind redeemer.

Redemption requests for Creation Units of a Fund must be submitted to the Distributor or its agent by or through an Authorized Participant. An Authorized Participant must submit an irrevocable request to redeem Shares of a Fund, in proper form, generally before 4 p.m., Eastern time on any Business Day, in order to receive that day's NAV.

Net Asset Value

The NAV of each Fund will be determined by deducting a Fund's liabilities from the total assets of the portfolio. The NAV per Share will be determined by dividing the total NAV of a Fund by the number of Shares outstanding.

Each Fund will calculate its NAV per Share each Business Day as of 1 p.m. Pacific time which normally coincides with the close of trading on the New York Stock Exchange (''NYSE''). Each Fund will not calculate its NAV on days the NYSE is closed for trading. If the NYSE has a scheduled early close or unscheduled early close, a Fund's Share price would still be determined as of 1 p.m. Pacific time/4 p.m. Eastern time. Each Fund's NAV per Share will be available online at *www.libertyshares.com.*

Municipal Securities generally trade in the over-the-counter (''OTC'') market rather than on a securities exchange. Each Fund's pricing services will use valuation models or matrix pricing to determine current value. In general, they will use information with respect to comparable bond and note transactions, quotations from bond dealers or by reference to other securities that are considered comparable in such characteristics as rating, interest rate and maturity date. Matrix pricing is considered a form of fair value pricing.

Each Fund generally will use two independent pricing services to assist in determining a current market value for each security. If market quotations are readily available for portfolio securities listed on a securities exchange, a Fund will value those securities at the last quoted sale price or the official closing price of the day, respectively, in accordance with valuation procedures approved by the Board of Trustees, or, if there is no reported sale, within the range of the most recent quoted bid and ask prices. Short-term debt instruments, including U.S. government securities, high grade commercial paper, repurchase agreements, negotiable certificates of deposit, non-negotiable fixed time deposits, bankers acceptances, and other money market equivalents will be valued at prices supplied by approved pricing services which are generally within the range of the most recent bid and ask prices.

Generally, trading in U.S. government securities and money market equivalents is substantially completed each day at various times before 1 p.m. Pacific time. The value of these securities used in computing the NAV will be determined as of such times. Each Fund will rely on third-party pricing vendors to provide evaluated prices that reflect current fair market value as of 1 p.m. Pacific time.

Each Fund has procedures, approved by the Board of Trustees, to determine the fair value of individual securities and other assets for which market prices are not readily available or which may not be reliably priced (such as in the case of trade suspensions or halts, price movement limits set by certain foreign markets, and thinly traded or illiquid securities). Some methods for valuing these securities may include: Fundamental analysis (earnings multiple, etc.), matrix pricing, discounts from market prices of similar securities, or discounts applied due to the nature and duration of restrictions on the disposition of the securities. The Board of Trustees oversees the application of fair value pricing procedures.

ETFs will be valued at market value, which will generally be determined using the last reported official closing or last trading price on the exchange or market on which the security is primarily traded at the time of valuation or, if no sale has occurred, at the last quoted bid price on the primary market or exchange on which they are traded. If market prices are unavailable or a Fund believes that they are unreliable, or when the value of a security has been materially affected by events occurring after the relevant market closes, a Fund will price those securities at fair value as determined in good faith using methods approved by the Funds' Board of Trustees.

Shares of non-exchange-traded open-end investment companies will be valued at their current day NAV published by the relevant fund.

Indicative Optimized Portfolio Value

Information regarding the intraday value of Shares of a Fund (the Indicative Optimized Portfolio Value'' or ''IOPV'') will be disseminated every 15 seconds during the Exchange's Core Trading Session (normally 9:30 a.m. to 4:00 p.m. Eastern Time) by market data vendors or other information providers. The IOPV will be based on the current market value of the Fund's portfolio holdings that will form the basis for the Fund's calculation of NAV at the end of the Business Day, as disclosed on the Fund's Web site prior to that Business Day's commencement of trading. The IOPV will generally be determined by using both current market quotations and/or price quotations obtained from broker-dealers that may trade in the portfolio securities held by a Fund. A Fund's IOPV disseminated during the Exchange's Core Trading Session should not be viewed as a real-time update of a Fund's NAV, which is calculated only once a day.

Availability of Information

Each Fund's Web site (*www.libertyshares.com*), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Funds that may be downloaded. Each Fund's Web site will include additional quantitative information updated on a daily basis, including, for each Fund, (1) daily trading volume, the prior Business Day's NAV and market closing price or mid-point of the bid/ask spread at the time of calculation of such NAV (the ''Bid/Ask Price''),[27] and a calculation of the premium or discount of the market closing price or Bid/Ask Price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily market closing price or Bid/Ask Price against the NAV, within appropriate ranges, for the most recently completed calendar year, and the most recently completed calendar quarters since that year (or the life of a Fund, if shorter). On each Business Day, before commencement of trading in Shares in the Core Trading Session on the Exchange (ordinarily 9:30 a.m., Eastern Time), each Fund's Web site will disclose the Disclosed Portfolio [28] that will form the basis for a Fund's calculation of its NAV at the end of the Business Day.[29]

On a daily basis, the Funds will disclose the information required under NYSE Arca Equities Rule 8.600(c)(2) to the extent applicable. The Web site information will be publicly available at no charge.

In addition, a basket composition file, which includes the security names and share quantities, if applicable, required to be delivered in exchange for a Fund's Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the Exchange via the NSCC. The basket represents one Creation Unit of a Fund. The NAV of Shares of a Fund

[27] The Bid/Ask Price of a Fund's Shares will be determined using the mid-point of the highest bid and the lowest offer on the Exchange as of the time of calculation of a Fund's NAV. The records relating to Bid/Ask Prices will be retained by each Fund and its service providers.

[28] The term ''Disclosed Portfolio'' is defined in NYSE Arca Equities Rule 8.600(c)(2).

[29] Under accounting procedures followed by the Funds, trades made on the prior Business Day (''T'') will be booked and reflected in NAV on the current Business Day (''T+1''). Accordingly, the Funds will be able to disclose at the beginning of the Business Day the portfolio that will form the basis for the NAV calculation at the end of the Business Day.

will normally be determined as of the close of the Core Trading Session on the Exchange (ordinarily 4 p.m. Eastern time) on each Business Day. Authorized Participants may refer to the basket composition file for information regarding securities and financial instruments that may comprise a Fund's basket on a given day.

Investors can also obtain each Fund's Statement of Additional Information (''SAI''), shareholder reports, Form N–CSR and Form N–SAR, filed twice a year. The Funds' SAI and shareholder reports will be available free upon request from the Trust, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission's Web site at *www.sec.gov.* Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.

Quotation and last sale information for the Shares and for ETFs will be available via the Consolidated Tape Association (''CTA'') high-speed line, and from the national securities exchange on which they are listed.

Quotation information from brokers and dealers or pricing services will be available for Municipal Securities, unrated debt securities, defaulted debt securities, high yield debt securities, and cash equivalents or other high quality short-term investments, including U.S. government securities, bank obligations and taxable commercial paper. Price information for money market funds and other investment companies will be available from the applicable investment company's Web site and from market data vendors. Pricing information regarding each other asset class in which a Fund will invest will generally be available through nationally recognized data service providers through subscription agreements. In addition, the IOPV (which is the Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600(c)(3)), will be widely disseminated at least every 15 seconds during the Core Trading Session (ordinarily 9:30 a.m. to 4:00 p.m., Eastern Time) by one or more major market data vendors or other information providers.[30]

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of a Fund. Trading in Shares of a Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m., Eastern Time in accordance with NYSE Arca Equities Rule 7.34 (Early, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, the minimum price variation (''MPV'') for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

The Shares of each Fund will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600. Consistent with NYSE Arca Equities Rule 8.600(d)(2)(B)(ii), the Adviser will implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of a Fund's portfolio. The Exchange represents that, for initial and/or continued listing, a Fund will be in compliance with Rule 10A–3[31] under the Act, as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. Each Fund's investments will be consistent with a Fund's investment objective and will not be used to enhance leverage.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by the Exchange, as well as cross-market surveillances administered by Financial Industry Regulatory Authority (''FINRA'') on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.[32]

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.[33]

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and ETFs with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares and ETFs from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and ETFs from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by a Fund reported to FINRA's Trade Reporting and Compliance Engine (''TRACE''). FINRA also can access data obtained from the Municipal Securities Rulemaking Board (''MSRB'') relating to municipal bond trading activity for surveillance purposes in connection with trading in the Shares.

[30] Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available IOPVs taken from CTA or other data feeds.

[31] 17 CFR 240.10A–3.

[32] FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

[33] For a list of the current members of ISG, *see www.isgportal.org.* The Exchange notes that not all components of the Disclosed Portfolio may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

All statements and representations made in this filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets, or (c) applicability of Exchange listing rules specified in this filing shall constitute continued listing requirements for listing the Shares of a Fund on the Exchange.

The issuer has represented to the Exchange that it will advise the Exchange of any failure by a Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Equities Rule 5.5(m).

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin (''Bulletin'') of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its Equity Trading Permit Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated IOPV will not be calculated or publicly disseminated; (4) how information regarding the IOPV and the Disclosed Portfolio is disseminated; (5) the requirement that Equity Trading Permit Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that each Fund is subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4:00 p.m., Eastern Time each trading day.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) [34] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.600. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and ETFs with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares and ETFs from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and ETFs from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by a Fund reported to TRACE. FINRA also can access data obtained from the MSRB relating to municipal bond trading activity for surveillance purposes in connection with trading in the Shares. Each Fund may not purchase illiquid assets if, in the aggregate, more than 15% of its net assets would be invested in illiquid assets. Each Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of a Fund's net assets are held in illiquid assets. The Adviser is not registered as a broker-dealer but is affiliated with a broker-dealer and will implement and maintain a fire wall with respect to each of its relevant personnel or broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolios.

The Exchange believes that it is appropriate and in the public interest to approve listing and trading of Shares of the Funds on the Exchange notwithstanding that the Funds would not meet the requirements of Commentary .01(b)(1) to Rule 8.600 in that the Funds' investments in Municipal Securities will be well-diversified. As noted above, under normal market conditions, except for periods of high cash inflows or outflows, each Fund will satisfy the following criteria. Each Fund will have a minimum of 35 Municipal Securities holdings. After a Fund has at least $100 million in assets, it will have a minimum of 75 Municipal Securities holdings. With respect to 75% of each Fund's total assets, no single Municipal Securities issuer will account for more than 3% of the weight of a Fund's portfolio. For the remaining portion of each Fund's assets, no single Municipal Securities issuer will account for more than 6% of the weight of a Fund's portfolio. Each Fund will limit its investments in Municipal Securities of any one state to 15% of a Fund's total assets and will be diversified among issuers in at least 10 states. Each Fund will limit its investments in Municipal Securities in any single sector to 25% of a Fund's total assets. The Exchange believes it would be appropriate to exclude pre-refunded bonds from the above limits given that they have a high level of credit quality and liquidity. In addition, other than Commentary .01(b)(1) to Rule 8.600, each Fund's portfolio will meet all other requirements of Rule 8.600.

The Exchange believes that permitting Fund Shares to be listed and traded on the Exchange notwithstanding that less than 75% of the weight of a Fund's portfolio may consist of components with less than $100 million minimum original principal amount outstanding would provide the Funds with greater ability to select from a broad range of Municipal Securities, as described above, that would support a Fund's investment objective. The Exchange believes further that, notwithstanding that each Fund's portfolio may not satisfy Commentary .01(b)(1) to Rule 8.600, the Funds' portfolios will not be susceptible to manipulation. A Fund will not invest more than 15% of its total assets in Municipal Securities of any one state. In addition, each Fund's portfolio will be well-diversified in that

[34] 15 U.S.C. 78f(b)(5).

each Fund will have a specified minimum number of Municipal Securities holdings and will be subject to percentage limitations on a Fund's total assets invested in Municipal Securities of individual issuers, states and sectors, as described above.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information is publicly available regarding each Fund and the Shares, thereby promoting market transparency. Quotation and last sale information for the Shares and ETFs will be available via the CTA high-speed line, and from the national securities exchange on which they are listed. Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Trading in Shares of the Funds will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Funds may be halted. In addition, as noted above, investors will have ready access to information regarding the Funds' holdings, the IOPV, the Disclosed Portfolio, and quotation and last sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of additional types of actively-managed exchange-traded products that principally hold municipal bonds and that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding each Fund's holdings, IOPV, Disclosed Portfolio, and quotation and last sale information for the Shares.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of additional types of actively-managed exchange-traded products that principally hold municipal bonds and that will enhance competition among market participants, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2017–48 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2017–48. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2017–48 and should be submitted on or before May 24, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[35]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–08900 Filed 5–2–17; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 32615; File No. 812–14646]

Commonwealth Annuity and Life Insurance Company, et al.

April 27, 2017.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice.

Notice of application for an order approving the substitution of certain securities pursuant to Section 26(c) of the Investment Company Act of 1940, as amended (the ''1940 Act'' or ''Act'') and an order of exemption pursuant to Section 17(b) of the Act from Section 17(a) of the Act.

[35] 17 CFR 200.30–3(a)(12).

APPLICANTS: Commonwealth Annuity and Life Insurance Company (''Commonwealth'') and Commonwealth Select Separate Account of Commonwealth Annuity and Life Insurance Company, Commonwealth Select Separate Account II of Commonwealth Annuity and Life Insurance Company, Commonwealth Select Separate Account III of Commonwealth Annuity and Life Insurance Company, Fulcrum Separate Account of Commonwealth Annuity and Life Insurance Company, Group VEL Account of Commonwealth Annuity and Life Insurance Company, Inheritage Account of Commonwealth Annuity and Life Insurance Company, Separate Account FUVUL of Commonwealth Annuity and Life Insurance Company, Separate Account IMO of Commonwealth Annuity and Life Insurance Company, Separate Account KG of Commonwealth Annuity and Life Insurance Company, Separate Account KGC of Commonwealth Annuity and Life Insurance Company, Separate Account VA–K of Commonwealth Annuity and Life Insurance Company, Separate Account VA–P of Commonwealth Annuity and Life Insurance Company, Separate Account VEL of Commonwealth Annuity and Life Insurance Company, Separate Account VEL II of Commonwealth Annuity and Life Insurance Company, Separate Account VEL III of Commonwealth Annuity and Life Insurance Company (collectively, the ''Separate Accounts,'' and together with Commonwealth, the ''Section 26 Applicants''); and Forethought Variable Insurance Trust (the ''Trust''), and Global Atlantic Investment Advisors, LLC (''Global Atlantic,'' and collectively with the Section 26 Applicants, the ''Section 17 Applicants'').

SUMMARY OF APPLICATION: The Section 26 Applicants seek an order pursuant to Section 26(c) of the 1940 Act, approving the substitution of shares of 77 investment portfolios (each, an ''Existing Portfolio,'' and collectively, the ''Existing Portfolios'') of 20 registered investment companies [1] with shares of 13 investment portfolios (each, a ''Replacement Portfolio,'' and collectively, the ''Replacement Portfolios'') of the Trust, under certain variable annuity contracts and variable life insurance policies (the ''Contracts'') funded through the Separate Accounts.

FILING DATE: The application was filed on April 29, 2016, and was amended and restated on October 18, 2016 and March 3, 2017.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving the Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 22, 2017 and should be accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to Rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES:

Commission: Secretary, SEC, 100 F Street NE., Washington, DC 20549–1090.

Applicants: Commonwealth Annuity and Life Insurance Company, Commonwealth Select Separate Account of Commonwealth Annuity and Life Insurance Company, Commonwealth Select Separate Account II of Commonwealth Annuity and Life Insurance Company, Commonwealth Select Separate Account III of Commonwealth Annuity and Life Insurance Company, Fulcrum Separate Account of Commonwealth Annuity and Life Insurance Company, Group VEL Account of Commonwealth Annuity and Life Insurance Company, Inheritage Account of Commonwealth Annuity and Life Insurance Company, Separate Account FUVUL of Commonwealth Annuity and Life Insurance Company, Separate Account IMO of Commonwealth Annuity and Life Insurance Company, Separate Account KG of Commonwealth Annuity and Life Insurance Company, Separate Account KGC of Commonwealth Annuity and Life Insurance Company, Separate Account VA–K of Commonwealth Annuity and Life Insurance Company, Separate Account VA–P of Commonwealth Annuity and Life Insurance Company, Separate Account VEL of Commonwealth Annuity and Life Insurance Company, Separate Account VEL II of Commonwealth Annuity and Life Insurance Company, Separate Account VEL III of Commonwealth Annuity and Life Insurance Company, 132 Turnpike Road Suite 210, Southborough, MA 01772; and Forethought Variable Insurance Trust and Global Atlantic Investment Advisors, LLC, 300 N. Meridian Street, Suite 1800, Indianapolis, IN, 46204.

FOR FURTHER INFORMATION CONTACT: Erin C. Loomis, Senior Counsel, at (202) 551–6721, or Holly Hunter-Ceci, Acting Assistant Chief Counsel at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an Applicant using the Company name box, at *http://www.sec.gov.search/search.htm,* or by calling (202) 551–8090.

Applicants' Representations

1. Commonwealth is a life insurance company engaged in the business of writing individual and group annuity contracts and life insurance policies. Commonwealth was originally organized under the laws of Delaware in July 1974 and was subsequently re-domiciled in the state of Massachusetts effective December 31, 2002.

2. Prior to December 30, 2005, Commonwealth (formerly Allmerica Financial Life Insurance and Annuity Company) was an indirect wholly-owned subsidiary of The Hanover Insurance Group (''THG''), formerly Allmerica Financial Corporation. On that date, THG completed the closing of the sale of Commonwealth to The Goldman Sachs Group, Inc. (''Goldman Sachs''). Effective September 1, 2006, Commonwealth changed its name from Allmerica Financial Life Insurance and

[1] (1) AB Variable Products Series Fund, Inc. (File Nos. 811–05398; 033–18647); (2) Alger Portfolios (File Nos. 811–05550; 033–21722); (3) AIM Variable Insurance Funds (Invesco Variable Insurance Funds) (File Nos. 811–07452; 033–57340); (4) Delaware VIP Trust (File Nos. 811–05162; 033–14363); (5) Deutsche Variable Series I (File Nos. 811–04257; 002–96461); (6) Deutsche Variable Series II (File Nos. 811–05002; 033–11802); (7) Dreyfus Investment Portfolios (File Nos. 811–08673; 333–47011); (8) Fidelity Variable Insurance Products Fund I (File Nos. 811–03329; 002–75010); (9) Fidelity Variable Insurance Products Fund II (File Nos. 811–05511; 033–20773); (10) Fidelity Variable Insurance Products Fund III (File Nos. 811–07205; 033–54837); (11) Fidelity Variable Insurance Products Fund V (File Nos. 811–05361; 033–17704); (12) Franklin Templeton Variable Insurance Products Trust (File Nos. 811–05583; 033–23493); (13) Goldman Sachs Variable Insurance Trust (File Nos. 811–08361; 333–35883); (14) Janus Aspen Portfolio (File Nos. 811–07736; 033–63212); (15) Lazard Retirement Series, Inc. (File Nos. 811–08071; 333–22309); (16) Lincoln Variable Insurance Products Trust (File Nos. 811–08090; 033–70742); (17) MFS Variable Insurance Trust (File Nos. 811–08326; 033–74668); (18) Oppenheimer Variable Account Funds (File Nos. 811–04108; 002–93177); (19) Pioneer Variable Contracts Trust (File Nos. 811–08786; 033–84546); (20) T. Rowe Price International Series, Inc. (File Nos. 811–07145; 033–07145).

Annuity Company to Commonwealth Annuity and Life Insurance Company. Effective April 30, 2013, Goldman Sachs completed the transfer of the common stock of Commonwealth to Global Atlantic (Fin) Company, which is a wholly-owned indirect subsidiary of Global Atlantic Financial Group Limited. Effective January 2, 2014, Forethought Services LLC acquired ownership of 79% of the shares of Commonwealth. Forethought Services LLC is a wholly-owned subsidiary of Forethought Financial Group, Inc., which in turn is a wholly-owned subsidiary of Global Atlantic (Fin) Company. As of December 31, 2015, Goldman Sachs owns a total of approximately 22% of the outstanding shares of Global Atlantic; and other investors, none of whom own more than 9.9%, own the remaining 78% of the outstanding ordinary shares.

3. Each of the Separate Accounts meets the definition of ''separate account,'' as defined in Section 2(a)(37) of the 1940 Act and Rule 0–1(e) thereunder. The Separate Accounts are registered with the Commission under the 1940 Act as unit investment trusts. The assets of the Separate Accounts support the Contracts and interests in the Separate Accounts offered through such Contracts. Commonwealth is the legal owner of the assets in the Separate Accounts. The Separate Accounts are segmented into subaccounts, and each subaccount invests in an underlying registered open-end management investment company or a series thereof. A subaccount of one or more of the Separate Accounts corresponds to each of the Existing Portfolios. The business and affairs of the Separate Accounts, as unit investment trusts, are conducted by Commonwealth, as depositor thereof.

4. The Contracts are each registered under the Securities Act of 1933, as amended (the ''1933 Act''), on Form N–4 or Form N–6, as applicable. Each of the Contracts has particular fees, charges, and investment options, as described in the Contracts' respective registration statements.

5. The Contracts are individual or group deferred variable annuity contracts or variable life insurance policies. As set forth in the prospectuses for the Contracts, Commonwealth reserves the right to substitute shares of another registered investment company for the shares of any registered investment company already purchased or to be purchased in the future by the Separate Accounts.

6. Applicants propose, as set forth below, to substitute shares of the Replacement Portfolios for shares of the Existing Portfolios (''Substitutions''):

Existing portfolio	Replacement portfolio
AB Large Cap Growth Portfolio (Class A)	Global Atlantic BlackRock Disciplined Core Portfolio (Class I).
AB Large Cap Growth Portfolio (Class B)	Global Atlantic BlackRock Disciplined Core Portfolio (Class I, II).
Deutsche Core Equity VIP (Class A)	Global Atlantic BlackRock Disciplined Core Portfolio (Class I).
Delaware VIP U.S. Growth Series (Standard Class)	Global Atlantic BlackRock Disciplined Core Portfolio (Class I).
Fidelity VIP Contrafund Portfolio (Initial Class)	Global Atlantic BlackRock Disciplined Core Portfolio (Class I).
Fidelity VIP Contrafund Portfolio (Service Class 2)	Global Atlantic BlackRock Disciplined Core Portfolio (Class I, Class II).
Fidelity VIP Growth Portfolio (Initial Class)	Global Atlantic BlackRock Disciplined Core Portfolio (Class I).
Fidelity VIP Growth Portfolio (Service Class 2)	Global Atlantic BlackRock Disciplined Core Portfolio (Class I, Class II).
Fidelity VIP Growth & Income Portfolio (Initial Class, Service Class 2)	Global Atlantic BlackRock Disciplined Core Portfolio (Class I).
Fidelity VIP Growth Opportunities Portfolio (Service Class 2)	Global Atlantic BlackRock Disciplined Core Portfolio (Class I).
Franklin Large Cap Growth VIP Fund (Class 2)	Global Atlantic BlackRock Disciplined Core Portfolio (Class I, Class II).
Goldman Sachs Strategic Growth Fund (Service Shares)	Global Atlantic BlackRock Disciplined Core Portfolio (Class I, Class II).
Goldman Sachs U.S. Equity Insights Fund (Service Shares)	Global Atlantic BlackRock Disciplined Core Portfolio (Class I, Class II).
Invesco V.I. American Franchise Fund (Series I)	Global Atlantic BlackRock Disciplined Core Portfolio (Class I, II).
Invesco V.I. American Franchise Fund (Series II)	Global Atlantic BlackRock Disciplined Core Portfolio (Class II).
Invesco V.I. Core Equity Fund (Series I)	Global Atlantic BlackRock Disciplined Core Portfolio (Class I).
Invesco V.I. Core Equity Fund (Series II)	Global Atlantic BlackRock Disciplined Core Portfolio (Class II).
MFS Growth Series (Initial Class)	Global Atlantic BlackRock Disciplined Core Portfolio (Class I).
MFS Investors Trust Series (Initial Class)	Global Atlantic BlackRock Disciplined Core Portfolio (Class I).
Oppenheimer Capital Appreciation Fund/VA (Service Shares)	Global Atlantic BlackRock Disciplined Core Portfolio (Class I, Class II).
Pioneer Fund VCT Portfolio (Class I)	Global Atlantic BlackRock Disciplined Core Portfolio (Class II).
Pioneer Fund VCT Portfolio (Class II)	Global Atlantic BlackRock Disciplined Core Portfolio (Class I).
Alger Capital Appreciation Portfolio (Class I–2)	Global Atlantic BlackRock Disciplined Growth Portfolio (Class II).
Deutsche CROCI International VIP (Class A)	Global Atlantic BlackRock Disciplined International Core Portfolio (Class I).
Delaware VIP International Value Equity Series (Standard Class, Service Class).	Global Atlantic BlackRock Disciplined International Core Portfolio (Class I, Class II).
Fidelity VIP Overseas Portfolio (Initial Class)	Global Atlantic BlackRock Disciplined International Core Portfolio (Class I).
Invesco V.I. International Growth Fund (Series I)	Global Atlantic BlackRock Disciplined International Core Portfolio (Class I).
Goldman Sachs Strat. International Equity Fund (Service Shares)	Global Atlantic BlackRock Disciplined International Core Portfolio (Class I, Class II).
Lazard Retirement International Equity Portfolio (Service Shares)	Global Atlantic BlackRock Disciplined International Core Portfolio (Class II).
T. Rowe Price International Stock Portfolio	Global Atlantic BlackRock Disciplined International Core Portfolio (Class I, Class II).
Templeton Foreign VIP Fund (Class 2)	Global Atlantic BlackRock Disciplined International Core Portfolio (Class I, Class II).
AB Growth and Income Portfolio (Class B)	Global Atlantic BlackRock Disciplined Value Portfolio (Class I, Class II).
AB Value Portfolio (Class B)	Global Atlantic BlackRock Disciplined Value Portfolio (Class I, Class II).
Deutsche Large Cap Value VIP (Class A)	Global Atlantic BlackRock Disciplined Value Portfolio (Class I).
Fidelity VIP Equity-Income Portfolio (Initial Class)	Global Atlantic BlackRock Disciplined Value Portfolio (Class I).
Fidelity VIP Equity-Income Portfolio (Service Class 2)	Global Atlantic BlackRock Disciplined Value Portfolio (Class I, Class II).
Franklin Mutual Shares VIP Fund (Class 2)	Global Atlantic BlackRock Disciplined Value Portfolio (Class I, Class II).
Franklin Growth & Income VIP Fund (Class 2)	Global Atlantic BlackRock Disciplined Value Portfolio (Class I).
Invesco V.I. Value Opportunities Fund (Series II)	Global Atlantic BlackRock Disciplined Value Portfolio (Class I, Class II).
Pioneer Equity Income VCT Portfolio (Class I).	Global Atlantic BlackRock Disciplined Value Portfolio (Class I).

Existing portfolio	Replacement portfolio
Alger Mid Cap Growth Portfolio (Class I–2)	Global Atlantic BlackRock Disciplined Mid Cap Growth Portfolio (Class I).
Deutsche Small Mid Cap Growth VIP (Class A)	Global Atlantic BlackRock Disciplined Mid Cap Growth Portfolio (Class I).
Delaware VIP Smid Cap Growth Series (Standard Class)	Global Atlantic BlackRock Disciplined Mid Cap Growth Portfolio (Class I).
Delaware VIP Smid Cap Growth Series (Service Class)	Global Atlantic BlackRock Disciplined Mid Cap Growth Portfolio (Class I, Class II).
Fidelity VIP Mid Cap Portfolio (Initial Class, Service Class 2)	Global Atlantic BlackRock Disciplined Mid Cap Growth Portfolio (Class I).
Franklin Small-Mid Cap Growth VIP Fund (Class 2)	Global Atlantic BlackRock Disciplined Mid Cap Growth Portfolio (Class I, Class II).
Invesco V.I. Mid Cap Growth Fund (Series I, Series II)	Global Atlantic BlackRock Disciplined Mid Cap Growth Portfolio (Class I).
Goldman Sachs Growth Opportunities Fund (Service Shares)	Global Atlantic BlackRock Disciplined Mid Cap Growth Portfolio (Class I, Class II).
Janus Aspen Enterprise Portfolio (Service Shares)	Global Atlantic BlackRock Disciplined Mid Cap Growth Portfolio (Class I).
MFS Mid Cap Growth Series (Service Class)	Global Atlantic BlackRock Disciplined Mid Cap Growth Portfolio (Class I, Class II).
Alger Small Cap Growth Portfolio (Class I–2)	Global Atlantic BlackRock Disciplined Small Cap Portfolio (Class I).
Delaware VIP Small Cap Value Series (Standard Class)	Global Atlantic BlackRock Disciplined Small Cap Portfolio (Class I).
Franklin Small Cap Value VIP Fund (Class 2)	Global Atlantic BlackRock Disciplined Small Cap Portfolio (Class II).
MFS New Discovery Series (Service Class)	Global Atlantic BlackRock Disciplined Small Cap Portfolio (Class II).
AB Growth Portfolio (Class B)	Global Atlantic BlackRock Disciplined U.S. Core Portfolio (Class I, Class II).
Delaware VIP Value Series (Standard Class)	Global Atlantic BlackRock Disciplined U.S. Core Portfolio (Class I).
Oppenheimer Main Street Fund/VA (Non-Service Class, Service Class)	Global Atlantic BlackRock Disciplined U.S. Core Portfolio (Class II).
AB Global Thematic Growth Portfolio (Class B)	Global Atlantic Goldman Sachs Global Equity Insights Portfolio (Class II).
Deutsche Global Equity VIP (Class A)	Global Atlantic Goldman Sachs Global Equity Insights Portfolio (Class I).
Deutsche Global Growth VIP (Class A)	Global Atlantic Goldman Sachs Global Equity Insights Portfolio (Class I).
Oppenheimer Global Fund/VA (Service Shares)	Global Atlantic Goldman Sachs Global Equity Insights Portfolio (Class II).
Templeton Growth VIP Fund (Class 2)	Global Atlantic Goldman Sachs Global Equity Insights Portfolio (Class II).
Alger Large Cap Growth Portfolio (Class I–2)	Global Atlantic Goldman Sachs Large Cap Growth Insights Portfolio (Class II).
Deutsche Capital Growth VIP (Class A)	Global Atlantic Goldman Sachs Large Cap Growth Insights Portfolio (Class I).
Janus Aspen Janus Portfolio (Institutional Shares)	Global Atlantic Goldman Sachs Large Cap Growth Insights Portfolio (Class I).
Janus Aspen Janus Portfolio (Service Shares)	Global Atlantic Goldman Sachs Large Cap Growth Insights Portfolio (Class I, Class II).
AB Small/Mid Cap Value Portfolio (Class B)	Global Atlantic Goldman Sachs Mid Cap Value Insights Portfolio (Class II).
Deutsche Small Mid Cap Value VIP (Class A)	Global Atlantic Goldman Sachs Mid Cap Value Insights Portfolio (Class I).
Dreyfus Midcap Stock Portfolio (Initial Shares)	Global Atlantic Goldman Sachs Mid Cap Value Insights Portfolio (Class I).
Fidelity VIP Value Strategies Portfolio (Service Class 2)	Global Atlantic Goldman Sachs Mid Cap Value Insights Portfolio (Class II).
Goldman Sachs Mid Cap Value Fund (Service Shares)	Global Atlantic Goldman Sachs Mid Cap Value Insights Portfolio (Class II).
Pioneer Mid Cap Value VCT Portfolio (Class I)	Global Atlantic Goldman Sachs Mid Cap Value Insights Portfolio (Class I).
Pioneer Mid Cap Value VCT Portfolio (Class II)	Global Atlantic Goldman Sachs Mid Cap Value Insights Portfolio (Class II).
Deutsche High Income VIP (Class A)	Global Atlantic BlackRock High Yield Portfolio (Class I).
Delaware VIP High Yield Series (Standard Class)	Global Atlantic BlackRock High Yield Portfolio (Class I).
Fidelity VIP High Income Portfolio (Initial Class)	Global Atlantic BlackRock High Yield Portfolio (Class I).
Fidelity VIP High Income Portfolio (Service Class 2)	Global Atlantic BlackRock High Yield Portfolio (Class II).
Invesco V.I. High Yield Fund (Series I)	Global Atlantic BlackRock High Yield Portfolio (Class I).
Pioneer High Yield VCT Portfolio (Class I, Class II)	Global Atlantic BlackRock High Yield Portfolio (Class I).
Deutsche Bond VIP (Class A)	Global Atlantic Goldman Sachs Core Fixed Income Portfolio (Class I).
Deutsche Unconstrained Income VIP (Class A)	Global Atlantic Goldman Sachs Core Fixed Income Portfolio (Class I).
Goldman Sachs Core Fixed Income Fund (Service Shares)	Global Atlantic Goldman Sachs Core Fixed Income Portfolio (Class I).
Pioneer Bond VCT Portfolio (Class I).	Global Atlantic Goldman Sachs Core Fixed Income Portfolio (Class I).
Alger Balanced Portfolio (Class I–2)	Global Atlantic BlackRock Allocation Portfolio (Class I).
Deutsche Global Income Builder VIP (Class A)	Global Atlantic BlackRock Allocation Portfolio (Class I).
Fidelity VIP Asset Manager Portfolio (Initial Class)	Global Atlantic BlackRock Allocation Portfolio (Class I).
Fidelity VIP Asset Manager Portfolio (Service Class 2)	Global Atlantic BlackRock Allocation Portfolio (Class II).

Existing portfolio	Replacement portfolio
LVIP Delaware Foundation Moderate Allocation Fund (Standard Class)	Global Atlantic BlackRock Allocation Portfolio (Class I, Class II).
MFS Total Return Series (Service Class)	Global Atlantic BlackRock Allocation Portfolio (Class I, Class II).

7. The Replacement Portfolios are all series of the Trust. The Trust is an insurance-dedicated Delaware statutory trust that was organized on June 17, 2013. The Trust is registered with the Commission as an open-end management investment company under the 1940 Act (File No. 811–22865) and its shares are registered under the 1933 Act (File No. 333–189870). The Trust is a series investment company and currently has 30 separate portfolios (each, a ''Global Atlantic Fund,'' and collectively, the ''Global Atlantic Funds''). The following 13 Global Atlantic Funds comprise the Replacement Portfolios: Global Atlantic BlackRock Allocation Portfolio, Global Atlantic BlackRock Disciplined Core Portfolio, Global Atlantic BlackRock Disciplined Growth Portfolio, Global Atlantic BlackRock International Core Portfolio, Global Atlantic BlackRock Disciplined Mid Cap Growth Portfolio, Global Atlantic BlackRock Small Cap Portfolio, Global Atlantic BlackRock U.S. Core Portfolio, Global Atlantic BlackRock Disciplined Value Portfolio, Global Atlantic BlackRock High Yield Portfolio, Global Atlantic Goldman Sachs Core Fixed Income Portfolio, Global Atlantic Goldman Sachs Global Equity Insights Portfolio, Global Atlantic Goldman Sachs Large Cap Growth Insights Portfolio, and Global Atlantic Goldman Sachs Mid Cap Value Insights Portfolio.

8. Global Atlantic, an Indiana limited liability company and a registered investment adviser, serves as investment adviser for each of the Global Atlantic Funds pursuant to an investment advisory agreement between the Trust, on behalf of each Global Atlantic Fund, and Global Atlantic.

9. Each Replacement Portfolio is sub-advised by BlackRock Investment Management, LLC (''BlackRock'') or Goldman Sachs Asset Management, L.P. (''GSAM''). BlackRock is a wholly owned subsidiary of BlackRock, Inc. BlackRock is a registered investment adviser and a commodity pool operator organized in Princeton, New Jersey. BlackRock, Inc. and its affiliates had approximately $4.64 trillion in assets under management as of December 31, 2015. BlackRock is located at 1 University Square, Princeton, NJ 08536. GSAM is a wholly-owned subsidiary of The Goldman Sachs Group, Inc. and an affiliate of Goldman Sachs. As of December 31, 2015, GSAM, including its investment advisory affiliates, had assets under supervision of approximately $1.08 trillion. GSAM's principal offices are located at 200 West Street, New York, NY 20182.

10. The Applicants believe that the Replacement Portfolios have investment objectives, principal investment strategies, and principle risks, as described in their prospectuses, that are substantially similar to, the corresponding Existing Portfolios to make those Replacement Portfolios appropriate candidates as substitutes.

11. Information for each Existing Portfolio and Replacement Portfolio, including investment objectives, principal investment strategies, principal risks, and comparative performance history, can be found in the application.

12. Applicants state that in selecting the Replacement Portfolios, Commonwealth sought to simplify fund lineups while reducing costs and maintaining a high-quality menu of investment options that would offer a similar diversity of investment options after the proposed Substitutions as is currently available under the Contracts. Contract owners with Contract value allocated to the subaccounts of the Existing Portfolios will have lower or equal net annual operating expenses immediately after the proposed Substitutions as before the proposed Substitutions. With respect to all of the proposed Substitutions, the combined management fee and Rule 12b–1 fees paid by the Replacement Portfolio are the same or lower than those of the corresponding Existing Portfolio. The application sets forth the fees and expenses of each Existing Portfolio and its corresponding Replacement Portfolio in greater detail.

13. Applicants represent that as of the Substitution Date (defined below), the Separate Accounts will redeem shares of the Existing Portfolios for cash or in-kind. Redemption requests and purchase orders will be placed simultaneously so that Contract values will remain fully invested at all times.

14. Each Substitution will be effected at the relative net asset values of the respective shares of the Replacement Portfolios in conformity with Section 22(c) of the 1940 Act and Rule 22c–1 thereunder without the imposition of any transfer or similar charges by the Section 26 Applicants. The Substitutions will be effected without change in the amount or value of any Contracts held by affected Contract owners.[2]

15. Contract owners will not incur any fees or charges as a result of the proposed Substitutions. The obligations of the Section 26 Applicants, and the rights of the affected Contract owners, under the Contracts of affected Contract owners will not be altered in any way. Commonwealth and/or its affiliates will pay all expenses and transaction costs of the Substitutions, including legal and accounting expenses, any applicable brokerage expenses and other fees and expenses. No fees or charges will be assessed to the affected Contract owners to effect the Substitutions. The proposed Substitutions will not cause the Contract fees and charges currently being paid by Contract owners to be greater after the proposed Substitution than before the proposed Substitution. In addition, the Substitutions will in no way alter the tax treatment of affected Contract owners in connection with their Contracts, and no tax liability will arise for Contract owners as a result of the Substitutions.

16. The Section 26 Applicants agree that, for a period of two years following the implementation of the proposed Substitution (the ''Substitution Date''), and for those Contracts with assets allocated to the Existing Portfolio on the Substitution Date, Commonwealth or an affiliate thereof (other than the Trust) will reimburse, on the last business day of each fiscal quarter, the Contract owners whose subaccounts invest in the applicable Replacement Portfolio to the extent that the Replacement Portfolio's net annual operating expenses (taking into account fee waivers and expense reimbursements) for such period exceeds, on an annualized basis, the net annual operating expenses of the

[2] The Section 26 Applicants state that, because the Substitutions will occur at relative net asset value, and the fees and charges under the Contracts will not change as a result of the Substitutions, the benefits offered by the guarantees under the Contracts will be the same immediately before and after the Substitutions. The Section 26 Applicants also state that what effect the Substitutions may have on the value of the benefits offered by the Contract guarantees would depend, among other things, on the relative future performance of the Existing Portfolios and Replacement Portfolios, which the Section 26 Applicants cannot predict. Nevertheless, the Section 26 Applicants note that at the time of the Substitutions, the Contracts will offer a comparable variety of investment options with as broad a range of risk/return characteristics.

Existing Portfolio for the most recent fiscal year preceding the date of the most recently filed application. Commonwealth will not increase the Contract fees and charges that would otherwise be assessed under the terms of the Contracts for a period of at least two years following the Substitution Date.

17. From the date the Pre-Substitution Notice (defined below) through 30 days following the Substitution Date, Contract owners may make at least one transfer of Contract value from the subaccount investing in an Existing Portfolio (before the Substitution) or the Replacement Portfolio (after the Substitution) to any other available subaccount under the Contract without charge and without imposing any transfer limitations. Further, on the Substitution Date, Contract values attributable to investments in each Existing Portfolio will be transferred to the corresponding Replacement Portfolio without charge and without being subject to any transfer limitations. Moreover, Commonwealth will not exercise any rights reserved under the Contracts to impose restrictions on transfers between the subaccounts under the Contracts, including limitations on the future number of transfers, for a period beginning at least 30 days before the Substitution Date through at least 30 days following the Substitution Date.

18. At least 30 days prior to the Substitution Date, Contract owners will be notified via prospectus supplements that the Section 26 Applicants received or expect to receive Commission approval of the applicable proposed Substitutions and of the anticipated Substitution Date (the ''Pre-Substitution Notice''). Pre-Substitution Notices sent to Contract owners will be filed with the Commission pursuant to Rule 497 under the 1940 Act. The Pre-Substitution Notice will advise Contract owners that from the date of the Pre-Substitution Notice through the date 30 days after the Substitutions, Contract owners may make at least one transfer of Contract value from the subaccounts investing in the Existing Portfolios (before the Substitutions) or the Replacement Portfolios (after the Substitutions) to any other available subaccount without charge and without imposing any transfer limitations. Among other information, the notice will inform affected Contract owners that that, except as described in the disruptive transfers or market timing provisions of the relevant prospectus, Commonwealth will not exercise any rights reserved under the Contracts to impose restrictions on transfers among the subaccounts under the Contracts, including limitations on the future number of transfers, through at least 30 days after the Substitution Date. Additionally, all affected Contract owners will be sent prospectuses of the applicable Replacement Portfolios at least 30 days before the Substitution Date.

19. In addition to the Supplements distributed to the Contract owners, within five business days after the Substitution Date, Contract owners whose assets are allocated to a Replacement Portfolio as part of the proposed Substitutions will be sent a written notice (each, a ''Confirmation'') informing them that the Substitutions were carried out as previously notified. The Confirmation also will restate the information set forth in the Pre-Substitution Notice. The Confirmation will also reflect the values of the Contract owner's positions in the Existing Portfolio before the Substitution and the Replacement Portfolio after the Substitution.

Legal Analysis

1. The Section 26 Applicants request that the Commission issue an order pursuant to Section 26(c) of the 1940 Act approving the proposed Substitutions. Section 26(c) of the 1940 Act prohibits any depositor or trustee of a unit investment trust that invests exclusively in the securities of a single issuer from substituting the securities of another issuer without the approval of the Commission. Section 26(c) provides that such approval shall be granted by order from the Commission if the evidence establishes that the substitution is consistent with the protection of investors and the purposes of the 1940 Act.

2. The Section 26 Applicants submit that the Substitutions meet the standards set forth in Section 26(c) and that, if implemented, the Substitutions would not raise any of the concerns that Congress intended to address when the 1940 Act was amended to include this provision. Applicants state that each Substitution protects the Contract owners who have Contract value allocated to an Existing Portfolio by providing Replacement Portfolios with substantially similar investment objectives, strategies, and risks, and providing Contract owners with investment options that would have total and net annual operating expense ratios that are lower than, or equal to, their corresponding investment options before the Substitutions.

3. Commonwealth has reserved the right under the Contracts to substitute shares of another underlying fund for one of the current funds offered as an investment option under the Contracts. The Contracts and the Contracts' prospectuses disclose this right.

4. The Section 26 Applicants submit that the ultimate effect of the proposed Substitutions will be to streamline and simplify the investment line-ups that are available to Contract owners while reducing expenses and continuing to provide Contract owners with a wide array of investment options. The Section 26 Applicants state that the proposed Substitutions will not reduce in any manner the nature or quality of the available investment options and the proposed Substitutions also will permit Commonwealth to present information to its Contract owners in a simpler and more concise manner. The Section 26 Applicants also state it is anticipated that after the proposed Substitutions, Contract owners will be provided with disclosure documents that contain a simpler presentation of the available investment options under the Contracts. The Section 26 Applicants also assert that the proposed Substitutions are not of the type that Section 26 was designed to prevent because they will not result in costly forced redemption, nor will they affect other aspects of the Contracts. In addition, the proposed Substitutions will not adversely affect any features or riders under the Contracts because none of the features or riders have any investment restrictions. Accordingly, no Contract owner will involuntarily lose his or her features or riders as a result of any proposed Substitution. Moreover, the Section 26 Applicants will offer Contract owners the opportunity to transfer amounts out of the affected subaccounts without any cost or other penalty (other than those necessary to implement policies and procedures designed to detect and deter disruptive transfer and other ''market timing'' activity) that may otherwise have been imposed for a period beginning on the date of the Pre-Substitution Notice (which supplement will be delivered to the Contract owners at least thirty (30) days before the Substitution Date) and ending no earlier than thirty (30) days after the Substitution Date. The proposed Substitutions are also unlike the type of substitution that Section 26(c) was designed to prevent in that the Substitutions have no impact on other aspects of the Contracts.

5. The Section 17 Applicants request an order under Section 17(b) exempting them from the provisions of Section 17(a) to the extent necessary to permit the Section 17 Applicants to carry out some or all of the proposed Substitutions. The Section 17

Applicants state that because the proposed Substitutions may be effected, in whole or in part, by means of in-kind redemptions and purchases, the proposed Substitutions may be deemed to involve one or more purchases or sales of securities or property between affiliated persons.

6. Section 17(a)(1) of the 1940 Act, in relevant part, prohibits any affiliated person of a registered investment company, or any affiliated person of such person, acting as principal, from knowingly selling any security or other property to that company. Section 17(a)(2) of the 1940 Act generally prohibits the persons described above, acting as principals, from knowingly purchasing any security or other property from the registered investment company.

7. The Section 17 Applicants state that the proposed transactions may involve a transfer of portfolio securities by the Existing Portfolios to the Separate Accounts. Immediately thereafter, the Separate Accounts would purchase shares of the Replacement Portfolios with the portfolio securities received from the Existing Portfolios. Accordingly, the Section 17 Applicants provide that to the extent Commonwealth and the Existing Portfolios, and Commonwealth and the Replacement Portfolios, are deemed to be affiliated persons of one another under Section 2(a)(3) or Section 2(a)(9) of the 1940 Act, it is conceivable that this aspect of the proposed Substitutions could be viewed as being prohibited by Section 17(a). Accordingly, the Section 17 Applicants have determined to seek relief from Section 17(a).

8. The Section 17 Applicants submit that the terms of the proposed in-kind purchases of shares of the Replacement Portfolios by the Separate Accounts, including the consideration to be paid and received, as described in the application, are reasonable and fair and do not involve overreaching on the part of any person concerned. The Section 17 Applicants submit that the terms of the proposed in-kind transactions, including the considered to be paid to each Existing Portfolio and received by each Replacement Portfolio involved, are reasonable, fair and do not involve overreaching principally because the transactions will conform with all but one of the conditions enumerated in Rule 17a–7 under the 1940 Act. The proposed transactions will take place at relative net asset value in conformity with the requirements of Section 22(c) of the 1940 Act and Rule 22c–1 thereunder without the imposition of any transfer or similar charges by the Section 26 Applicants. The Substitutions will be effected without change in the amount or value of any Contract held by the affected Contract owners. The Substitutions will in no way alter the tax treatment of affected Contract owners in connection with their Contracts, and no tax liability will arise for Contract owners as a result of the Substitutions. The fees and charges under the Contracts will not increase because of the Substitutions. Even though the Separate Accounts, Commonwealth and the Trust may not rely on Rule 17a–7, the Section 17 Applicants believe that the rule's conditions outline the type of safeguards that result in transactions that are fair and reasonable to registered investment company participants and preclude overreaching in connection with an investment company by its affiliated persons.

9. The Section 17 Applicants also submit that the proposed in-kind purchases by the Separate Accounts are consistent with the policies of the Trust and the Replacement Portfolios, as provided in the Trust's registration statement and reports filed under the 1940 Act. Finally, the Section 17 Applicants submit that the proposed Substitutions are consistent with the general purposes of the 1940 Act.

Applicants' Conditions

The Section 26 Applicants, and Global Atlantic as applicable, agree that any order granting the requested relief will be subject to the following conditions:

1. The Substitutions will not be effected unless Commonwealth determines that: (i) The Contracts allow the substitution of shares of registered open-end investment companies in the manner contemplated by the application; (ii) the Substitutions can be consummated as described in the application under applicable insurance laws; and (iii) any regulatory requirements in each jurisdiction where the Contracts are qualified for sale have been complied with to the extent necessary to complete the Substitutions.

2. After the Substitution Date, Global Atlantic will not change a sub-adviser, add a new sub-adviser, or otherwise rely on the Manager of Managers Order (as defined in the application), or any replacement order from the Commission, with respect to any Replacement Portfolio without first obtaining shareholder approval of the change in sub-adviser, the new sub-adviser, or the Replacement Portfolio's ability to rely on the Manager of Managers Order, or any replacement order from the Commission.

3. Commonwealth or an affiliate thereof (other than the Trust) will pay all expenses and transaction costs of the Substitutions, including legal and accounting expenses, any applicable brokerage expenses and other fees and expenses. No fees or charges will be assessed to the affected Contract owners to effect the Substitutions. The proposed Substitutions will not cause the Contract fees and charges currently being paid by Contract owners to be greater after the proposed Substitution than before the proposed Substitution.

4. The Substitutions will be effected at the relative net asset values of the respective shares of the Replacement Portfolios in conformity with Section 22(c) of the 1940 Act and Rule 22c–1 thereunder without the imposition of any transfer or similar charges by the Section 26 Applicants. The Substitutions will be effected without change in the amount or value of any Contracts held by affected Contract owners.

5. The Substitutions will in no way alter the tax treatment of affected Contract owners in connection with their Contracts, and no tax liability will arise for Contract owners as a result of the Substitutions.

6. The obligations of the Section 26 Applicants, and the rights of the affected Contract owners, under the Contracts of affected Contract owners will not be altered in any way.

7. Affected Contract owners will be permitted to make at least one transfer of Contract value from the subaccount investing in the Existing Portfolio (before the Substitution Date) or the Replacement Portfolio (after the Substitution Date) to any other available investment option under the Contract without charge for a period beginning at least 30 days before the Substitution Date through at least 30 days following the Substitution Date. Except as described in any market timing/short-term trading provisions of the relevant prospectus, the Section 26 Applicants will not exercise any rights reserved under the Contracts to impose restrictions on transfers between the subaccounts under the Contracts, including limitations on the future number of transfers, for a period beginning at least 30 days before the Substitution Date through at least 30 days following the Substitution Date.

8. All affected Contract owners will be notified, at least 30 days before the Substitution Date about: (i) The intended Substitution of Existing Portfolios with the Replacement Portfolios; (ii) the intended Substitution Date; and (iii) information with respect to transfers as set forth in Condition 7

above. In addition, the Section 26 Applicants will also deliver to affected Contract owners, at least thirty days before the Substitution Date, a prospectus for each applicable Replacement Portfolio.

9. The Section 26 Applicants will deliver to each affected Contract owner within five business days of the Substitution Date a written confirmation which will include: (i) A confirmation that the Substitutions were carried out as previously notified; (ii) a restatement of the information set forth in the Pre-Substitution Notice; and (iii) values of the Contract owner's positions in the Existing Portfolio before the Substitution and the Replacement Portfolio after the Substitution.

10. For a period of two years following the Substitution Date, for Contract owners who were Contract owners as of the Substitution Date, Commonwealth or an affiliate thereof (other than the Trust) will reimburse, on the last business day of each fiscal quarter, the Contract owners whose subaccounts invest in the applicable Replacement Portfolio to the extent that the Replacement Portfolio's net annual operating expenses (taking into account fee waivers and expense reimbursements) for such period exceeds, on an annualized basis, the net annual operating expenses of the Existing Portfolio for the most recent fiscal year preceding the date of the application. In addition, the Section 26 Applicants will not increase the Contract fees and charges that would otherwise be assessed under the terms of the Contracts for a period of at least two years following the Substitution Date.

For the Commission, by the Division of Investment Management, under delegated authority.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–08904 Filed 5–2–17; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80536

Order Granting Application by New York Stock Exchange LLC, NYSE MKT LLC, NYSE Arca, Inc., and NYSE National, Inc., Respectively, for a Conditional Exemption Pursuant to Section 36(a) of the Exchange Act From Certain Requirements of Rule 6a–2 Under the Exchange Act

April 27, 2017.

I. Introduction

On February 1, 2017, The New York Stock Exchange LLC (''NYSE''), NYSE MKT LLC (''NYSE MKT''), NYSE Arca, Inc. (''NYSE Arca''), and NYSE National, Inc. (''NYSE National'') (each an ''Exchange'', collectively, ''Exchanges'') each has requested, pursuant to Rule 0–12 [1] under the Securities Exchange Act of 1934 (''Exchange Act''),[2] that the Securities and Exchange Commission (''Commission'') grant an exemption pursuant to Section 36(a)(1) [3] of the Exchange Act from certain requirements under Rule 6a–2(b)(1) under the Exchange Act.[4] Each Exchange is registered with the Commission as a national securities exchange under Section 6 of the Exchange Act. This order grants each Exchange's request for exemptive relief, subject to the satisfaction of certain conditions, which are outlined below.

II. Application for Conditional Exemption From Certain Requirements of Exchange Act Rule 6a–2

Rule 6a–2(b)(1) under the Exchange Act [5] requires a national securities exchange to file, on or before June 30 of each year, an updated Exhibit D as an amendment to its Form 1.[6] Exhibit D to Form 1 requires an exchange to provide, for each subsidiary or affiliate of the exchange, unconsolidated financial statements for the latest fiscal year of the exchange.[7]

The Instructions to Form 1 define an ''affiliate'' as ''[a]ny person that, directly or indirectly, controls, is under common control with, or is controlled by, the national securities exchange . . ., including any employees.'' [8] The Instructions to Form 1 define ''control'' as

> The power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract or otherwise. Any person that . . . directly or indirectly has the right to vote 25% or more of a class of voting securities or has the power to sell or direct the sale of 25% or more of a class of voting securities . . . is presumed to control that entity.[9]

Each Exchange has requested that the Commission grant it an exemption pursuant to Section 36(a)(1) of the Exchange Act, subject to the conditions set forth below, with respect to its ''Foreign Indirect Affiliates,'' as defined below, from the requirement under Rule 6a–2(b)(1) under the Exchange Act to file the financial information required by Exhibit D.

Each Exemption Request states that the respective Exchange is a wholly-owned subsidiary of NYSE Group, Inc. (''NYSE Group''), a Delaware corporation. Each Exemption Request further states that NYSE Group is wholly owned by NYSE Holdings LLC (''NYSE Holdings''), a Delaware limited liability company, which is wholly owned by Intercontinental Exchange Holdings, Inc. (''ICE Holdings''), a Delaware corporation. In turn, ICE Holdings is wholly owned by Intercontinental Exchange, Inc. (''Parent Company''), a Delaware corporation. The Parent Company, through its wholly-owned subsidiaries, owns a large number of foreign entities, some of which also own interests in other foreign entities in excess of 25%.[10] The foreign entity affiliates and subsidiaries of the Parent Company are referred to, collectively, as the ''Foreign Indirect Affiliates.''

Each Exchange states that, because of the limited and indirect nature of its

[1] 17 CFR 240.0–12.

[2] 15 U.S.C. 78a *et seq.*

[3] 15 U.S.C. 78mm(a)(1).

[4] 17 CFR 240.6a–2(b)(1). *See* letters dated February 1, 2017, from Elizabeth King, General Counsel and Corporate Secretary, NYSE, to Brent J. Fields, Secretary, Commission, regarding Application for Exemption from Certain Form 1 Requirements under Section 6 of the Securities Exchange Act of 1934, submitted on behalf of NYSE, NYSE MKT, NYSE Arca, and NYSE National, respectively (collectively, the ''Exemption Requests'').

[5] 17 CFR 240.6a–2(b)(1).

[6] 17 CFR 249.1 (Form 1, ''Application for, and Amendments to Application for, Registration as a National Securities Exchange or Exemption from Registration Pursuant to Section 5 of the Exchange Act.'')

[7] Exhibit D to Form 1 requires that such financial statements consist, at a minimum, of a balance sheet and an income statement with such footnotes and other disclosures necessary to avoid rendering the financial statements misleading. Exhibit D further provides that, if any affiliate or subsidiary is required by another Commission rule to submit annual financial statements, the exchange may provide a statement to that effect, with a citation to the other Commission rule, in lieu of the financial statements required by Exhibit D.

[8] Form 1 Instructions Section B., Explanation of Terms.

[9] *Id.*

[10] *See* Exemption Requests, *supra* note 4, at 2.

connection to the Foreign Indirect Affiliates, the Exchange believes that the respective financial information of the Foreign Indirect Affiliates required by Exhibit D of Form 1 would have little relevance to the Commission's ongoing oversight of the Exchange as a national securities exchange.[11] Each Exchange also states that the Foreign Indirect Affiliates have no ability to influence the management, policies, or finances of the Exchange and have no obligation to provide funding to, or ability to materially affect the funding of, the Exchange.[12] Each Exchange further states that the Foreign Indirect Affiliates have no ownership interest in the Exchange or in any of the controlling shareholders of the Exchange and that there are no commercial dealings between the Exchange and the Foreign Indirect Affiliates.[13]

Furthermore, each Exchange states its opinion that its obtaining detailed financial information with respect to the Foreign Indirect Affiliates is unnecessary for the protection of investors and the public interest, and would be unduly burdensome and inefficient because the Foreign Indirect Affiliates are located in foreign jurisdictions and the disclosure of such information could implicate foreign information sharing restrictions in such jurisdictions.[14] Each Exchange notes that the Commission has granted similar exemptions to several other national securities exchanges.[15] In connection with its Exemption Request, each Exchange has provided an organizational chart setting forth the Parent Company's corporate structure, including its subsidiaries, and noting the affiliation of the Foreign Indirect Affiliates and the Exchange.[16] In addition, each Exchange represents that it will provide, on or before June 30th of each year, amendments to the information provided on the organizational chart setting forth the affiliation of the Foreign Indirect Affiliates and the Exchange.[17]

III. Order Granting Conditional Section 36 Exemption

Section 6 of the Exchange Act [18] sets forth a procedure for an exchange to register as a national securities exchange.[19] Rule 6a–1(a) under the Exchange Act [20] requires an application for registration as a national securities exchange to be filed on Form 1 in accordance with the instructions in Form 1. Rule 6a–2 under the Exchange Act establishes ongoing requirements for a national securities exchange to file certain amendments to Form 1.

Section 36(a)(1) of the Exchange Act provides that ''the Commission, by rule, regulation, or order, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of [the Exchange Act] or of any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.'' [21]

For the reasons discussed below, the Commission believes that it is appropriate in the public interest and consistent with the protection of investors to exempt the Exchanges from the requirement under Rule 6a–2(b)(1) under the Exchange Act to provide the information required in Exhibit D to Form 1 with respect to the Foreign Indirect Affiliates, subject to the following conditions:

(1) Each Exchange must provide, as part of its annual Form 1 amendment due on or before June 30th of each year, a list of the names of the Foreign Indirect Affiliates for which the Exchange is relying on exemptive relief; and

(2) Each Exchange must provide, as part of its annual Form 1 amendment due on or before June 30th of each year, an organizational chart setting forth the affiliation of all affiliates, including those Foreign Indirect Affiliates for which the Exchange is relying on exemptive relief.

The information included in a national securities exchange's annual amendment to Exhibit D to Form 1 under Rule 6a–2(b)(1) under the Exchange Act is designed to help the Commission exercise its oversight responsibilities with respect to national securities exchanges. Specifically, Exhibit D is designed to provide the Commission with information concerning the financial status of the affiliates and subsidiaries of a national securities exchange.[22] Such information is intended to help the Commission to assess the financial health of the affiliates and subsidiaries of a national securities exchange and thus to determine whether a national securities exchange has the ability to carry out its obligations under the Exchange Act.

Since the most recent amendments to Form 1 in 1998,[23] many national securities exchanges that previously were member-owned organizations with few affiliated entities have demutualized. Some of these demutualized exchanges have been consolidated under holding companies with numerous affiliates that, in some cases, have only a limited and indirect connection to the national securities exchange, with no ability to influence the management or policies of the national securities exchange and no obligation to fund, or to materially affect the funding of, the national securities exchange. The Commission believes that, with respect to these Foreign Indirect Affiliates, the information required under Exhibit D would have limited relevance to the Commission's

[11] *See* Exemption Requests, *supra* note 4, at 2–3.

[12] *See* Exemption Requests, *supra* note 4, at 3.

[13] *See* Exemption Requests, *supra* note 4, at 3. Each Exchange states that ''commercial dealings'' means any direct or indirect arrangement, agreement, or understanding or any other relationship including, but not limited to, the providing of hardware, software, technology services or any other goods or services that support the operation of the Exchange or any facility of the Exchange. *See* Exemption Requests at 3, n. 6.

[14] *See* Exemption Requests, *supra* note 4, at 3.

[15] As examples, each Exchange cites to Securities Exchange Act Release Nos. 60650 (September 11, 2009), 74 FR 47828 (September 17, 2009) (granting application by EDGX Exchange, Inc. (n/k/a Bats EDGX Exchange, Inc.) and EDGA Exchange, Inc. (n/k/a Bats EDGA Exchange, Inc.) for a conditional exemption pursuant to Section 36(a) of the Exchange Act from certain requirements of Rules 6a–1 and 6a–2 under the Exchange Act); 66241 (January 26, 2012), 77 FR 4845 (January 31, 2012) (granting application by BOX Options Exchange LLC for a conditional exemption pursuant to Section 36(a) of the Exchange Act from certain requirements of Rules 6a–1 and 6a–2 under the Exchange Act); and 69011 (March 1, 2013), 78 FR 14844 (March 7, 2013) (granting application by Topaz Exchange, LLC (n/k/a ISE Gemini, LLC) for a conditional exemption pursuant to Section 36(a) of the Exchange Act from certain requirements of Rules 6a–1 and 6a–2 under the Exchange Act). *See* Exemption Requests at 3. The Commission also granted a similar exemption to ISE Mercury, LLC. *See* Securities Exchange Act Release No. 75867 (September 9, 2015), 80 FR 55395 (September 15, 2015) (granting application by ISE Mercury, LLC for a conditional exemption pursuant to Section 36(a) of the Exchange Act from certain requirements of Rules 6a–1 and 6a–2 under the Exchange Act).

[16] *See* Exhibit A to the Exemption Requests, *supra* note 4.

[17] *See* Exemption Requests, *supra* note 4, at 2.

[18] 15 U.S.C. 78f.

[19] Specifically, Section 6(a) of the Exchange Act states that ''[a]n exchange may be registered as a national securities exchange . . . by filing with the Commission an application for registration in such form as the Commission, by rule, may prescribe containing the rules of the exchange and such other information and documents as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.'' Section 6 of the Exchange Act also sets forth various requirements to which a national securities exchange is subject.

[20] 17 CFR 240.6a–1(a).

[21] 15 U.S.C. 78mm(a)(1).

[22] *See* Securities Exchange Act Release No. 18843 (June 25, 1982), 47 FR 29259 (July 6, 1982) (proposing amendments to Form 1); *see also* Form 1, 17 CFR 249.1, and *supra* Section II.

[23] *See* Securities Exchange Act Release No. 40760 (December 8, 1998), 63 FR 70844 (December 22, 1998) (Regulation ATS Adopting Release).

oversight of a registered national securities exchange.

Based on the Exchanges' representations, the limited and indirect nature of the relationship between the Exchanges and the Foreign Indirect Affiliates, and the information that the Exchanges will provide with respect to all other affiliates, including the foreign direct affiliates and domestic direct and indirect affiliates, the Commission believes that it will have sufficient information necessary to oversee the Exchanges' activities as national securities exchanges under the Exchange Act.[24] In particular, the Commission notes that each Exchange has represented that the nature of the connection between it and the Foreign Indirect Affiliates is limited and indirect, that the Foreign Indirect Affiliates would have no ability to influence the management, policies, or finances of the Exchanges, and that the Foreign Indirect Affiliates would have no obligation to provide funding to, or ability to materially affect the funding of, the Exchanges.

In addition, the Commission notes that the Exchanges have represented that the Foreign Indirect Affiliates have no ownership interest in the Exchanges or in any of the controlling shareholders of the Exchanges and that there are no commercial dealings between any of the Exchanges and the Foreign Indirect Affiliates.[25]

For the reasons discussed above, the Commission finds that it is appropriate in the public interest and consistent with the protection of investors to grant the conditional exemptive relief requested by the Exchanges.

The Commission may modify by order the terms, scope or conditions of the exemption from Rule 6a–2(b)(1) under the Exchange Act granted to each Exchange if it determines that such modification is necessary or appropriate in the public interest, or is consistent with the protection of investors. Furthermore, the Commission may limit, suspend, or revoke the exemption granted to each Exchange if it finds that the Exchange has failed to comply with, or is unable to comply with, any of the conditions set forth in this order, if such action is necessary or appropriate in the public interest, or is consistent with the protection of investors.

It is ordered, pursuant to Section 36 of the Exchange Act,[26] that the Exchanges are exempt from the requirement under Rule 6a–2(b)(1) under the Exchange Act, with respect to the Foreign Indirect Affiliates, to update the information in Exhibit D to Form 1 on or before June 30th of each year subject to the following conditions:

(1) Each Exchange must provide, as part of its annual Form 1 amendment due on or before June 30th of each year, a list of the names of the Foreign Indirect Affiliates for which the Exchange is relying on exemptive relief; and

(2) Each Exchange must provide, as part of its annual Form 1 amendment due on or before June 30th of each year, an organizational chart setting forth the affiliation of all affiliates, including those Foreign Indirect Affiliates for which the Exchange is relying on exemptive relief.

By the Commission.

Brent J. Fields,

Secretary.

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BILLING CODE 8011–01–P

[24] 15 U.S.C. 78f(b) and 78s(a).

[25] *See* Exemption Requests, *supra* note 4.

[26] 15 U.S.C. 78mm.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80540; File No. SR–NASDAQ–2017–039]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change To List and Trade the Guggenheim Limited Duration ETF

April 27, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 13, 2017, The NASDAQ Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade the common shares of beneficial interest of the Guggenheim Limited Duration ETF (the ''Fund''), a series of Claymore Exchange-Traded Fund Trust (the ''Trust''), under Nasdaq Rule 5735 (''Rule 5735''). The common shares of beneficial interest of the Fund are referred to herein as the ''Shares.''

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade the Shares of the Fund under Rule 5735, which rule governs the listing and trading of Managed Fund Shares [3] on the Exchange.[4] The Shares will be

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A ''Managed Fund Share'' is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (the ''1940 Act'') organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Index Fund Shares, listed and traded on the Exchange under Nasdaq Rule 5705, seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

[4] The Commission approved Nasdaq Rule 5735 (formerly Nasdaq Rule 4420(o)) in Securities Exchange Act Release No. 57962 (June 13, 2008), 73 FR 35175 (June 20, 2008) (SR–NASDAQ–2008–039). There are already multiple actively managed funds listed on the Exchange; *see, e.g.,* Securities Exchange Act Release Nos. 69464 (April 26, 2013), 78 FR 25774 (May 2, 2013) (SR–NASDAQ–2013–036) (order approving listing and trading of First Trust Senior Loan Fund); 66489 (February 29, 2012), 77 FR 13379 (March 6, 2012) (SR–NASDAQ–2012–004) (order approving listing and trading of WisdomTree Emerging Markets Corporate Bond Fund); and 78533 (August 10, 2016), 81 FR 54634 (August 16, 2016) (SR–NASDAQ–2016–086) (order approving listing and trading of VanEck Vectors Long/Flat Commodity ETF). Additionally, the Commission has previously approved the listing and trading of a number of actively-managed funds on NYSE Arca, Inc. pursuant to Rule 8.600 of that exchange. *See, e.g.,* Securities Exchange Act Release No. 68870 (February 8, 2013), 78 FR 11245 (February 15, 2013) (SR–NYSEArca–2012–139) (order approving listing and trading of First Trust Preferred Securities and Income ETF). Moreover,

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offered by the Fund, which will be an actively managed exchange-traded fund (''ETF''). The Fund is a series of the Trust. The Trust was established as a Delaware statutory trust on May 24, 2006. The Trust is registered with the Commission as an open-end management investment company and has filed a post-effective amendment to its registration statement on Form N–1A (the ''Registration Statement'') with the Commission to register the Fund and its Shares under the 1940 Act and the Securities Act of 1933.[5]

Guggenheim Partners Investment Management, LLC will serve as the investment adviser (the ''Adviser'') to the Fund. Guggenheim Funds Distributors, LLC will serve as the principal underwriter and distributor of the Fund's Shares (the ''Distributor''). The Bank of New York Mellon will act as the custodian, transfer agent and fund accounting agent for the Fund (the ''Custodian''). MUFG Investor Services, LLC will serve as the administrator for the Fund (the ''Administrator'').

Paragraph (g) of Rule 5735 provides that, if the investment adviser to an investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company's portfolio.[6] In addition, paragraph (g) of Rule 5735 further requires that personnel who make decisions on such investment company's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the investment company's portfolio.

Rule 5735(g) is similar to Nasdaq Rule 5705(b)(5)(A)(i), which applies to index-based funds and requires ''fire walls'' between affiliated broker-dealers and investment advisers regarding the index-based fund's underlying benchmark index. Rule 5735(g), however, applies to the establishment of a ''fire wall'' between affiliated investment advisers and the broker-dealers with respect to the investment company's portfolio and not with respect to an underlying benchmark index, as is the case with index-based funds.

The Adviser is not a broker-dealer, but it is affiliated with the Distributor, a broker-dealer. The Adviser has therefore implemented and will maintain a fire wall with the Distributor with respect to the access of information concerning the composition and/or changes to the Fund's portfolio.

In the event (a) the Adviser or any sub-adviser becomes newly affiliated with a different broker-dealer, or (b) any new adviser to the Fund is a registered broker-dealer or becomes affiliated with a broker-dealer, each will implement and maintain a fire wall with respect to its relevant personnel and/or such broker-dealer affiliate, if applicable, regarding access to information concerning the composition and/or changes to the Fund's portfolio and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

Guggenheim Limited Duration ETF

The Fund will be an actively-managed ETF, and its investment objective is to seek to provide a level of income consistent with preservation of capital.

Principal Investments

The Fund will seek to achieve its investment objective by investing, under normal market conditions,[7] at least 80% of its net assets (plus the amount of any borrowings for investment purposes) in a diversified portfolio of ''Debt Instruments'' (as described below) of any interest rate, credit quality,[8] maturity or duration; however, the Fund expects, under normal market conditions, to maintain a dollar-weighted average duration [9] of generally less than 3.5 years (the ''80% Policy''). The 80% Policy may be represented by certain derivative instruments as discussed below,[10] and ETFs [11] and exchange-traded and over-the-counter (''OTC'') closed-end funds (''CEFs'') (which may include ETFs and CEFs affiliated with the Fund), provided that such ETFs and CEFs invest substantially all of their assets in Debt Instruments. The Fund will, as described further below, invest in the following Debt Instruments: Corporate debt securities of

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the Commission previously approved the listing and trading of other actively managed funds within the Guggenheim family of ETFs. *See, e.g.,* Security [sic] Exchange Act Release Nos. 64550 (May 26, 2011), 76 FR 32005 (June 2, 2011) (SR–NYSEArca–2011–11) (order approving listing of Guggenheim Enhanced Core Bond ETF and Guggenheim Enhanced Ultra-Short Bond ETF); 76719 (December 21, 2015), 80 FR 248 (December 28, 2015) (SR–NYSEArca–2015–73) (order approving listing of Guggenheim Total Return Bond ETF). The Exchange believes the proposed rule change raises no significant issues not previously addressed in those prior Commission orders.

[5] *See* Registration Statement for the Trust, filed on April 12, 2016 (File Nos. 333–134551 and 811–21906). The descriptions of the Fund and the Shares contained herein are based, in part, on information in the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release No. 29271 (May 18, 2010) (File No. 13534) (''Exemptive Order'').

[6] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with the Advisers Act and Rule 204A–1 thereunder. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[7] The term ''normal market conditions'' includes, but is not limited to, the absence of trading halts in the applicable financial markets generally; operational issues (*e.g.,* systems failure) causing dissemination of inaccurate market information; or force majeure type events such as natural or manmade disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

[8] The Fund may hold fixed-income securities of any quality, rated or unrated, including those that are rated below-investment grade (also known as ''high yield securities'' or ''junk bonds''), or if unrated, determined by the Adviser to be of comparable quality. If nationally recognized statistical rating organizations assign different ratings to the same security, the Fund will use the higher rating for purposes of determining the security's credit quality. However, the Fund will not invest more than 35% of its total assets in fixed-income securities that are rated below investment grade as described below under ''Investment Restrictions.''

[9] Duration is a measure of the price volatility of a debt instrument as a result of changes in market rates of interest, based on the weighted average timing of the instrument's expected principal and interest payments. Duration differs from maturity in that it considers a security's yield, coupon payments, principal payments and call features in addition to the amount of time until the security matures. As the value of a security changes over time, so will its duration. The longer a security's duration, the more sensitive it will be to changes in interest rates.

[10] *See* ''The Fund's Use of Derivatives,'' *infra.*

[11] The ETFs in which the Fund may invest include Index Fund Shares (as described in Nasdaq Rule 5705), Portfolio Depositary Receipts (as described in Nasdaq Rule 5705), and Managed Fund Shares (as described in Nasdaq Rule 5735). The shares of ETFs in which the Fund may invest will be limited to securities that trade in markets that are members of the Intermarket Surveillance Group (''ISG''), which includes all U.S. national securities exchanges, or exchanges that are parties to a comprehensive surveillance sharing agreement with the Exchange. The Fund will not invest more than 20% of its net assets in leveraged or inverse-leveraged ETFs. The Fund will not invest in non-U.S. exchanged-listed ETFs.

U.S. and non-U.S. issuers, including corporate bonds; [12] securities issued by the U.S. government or its agencies, instrumentalities or sponsored corporations (including those not backed by the full faith and credit of the U.S. government); [13] inflation-indexed bonds issued by both governments and corporations; [14] debt securities issued by states or local governments and their agencies, authorities and other government-sponsored enterprises (''Municipal Bonds''); [15] tender option bonds; [16] obligations of non-U.S. governments and their subdivisions, agencies and government-sponsored enterprises; obligations of international agencies or supranational entities; cash equivalents; [17] agency [18] and non-agency mortgage-backed securities (''MBS'') and asset-backed securities (''ABS''); [19]U.S. agency mortgage pass-through securities; [20] repurchase agreements; [21] commercial instruments (including asset-backed commercial instruments); [22] zero-coupon and payment-in-kind securities; [23] convertible securities; [24] preferred securities and step-up securities (such

[12] The Adviser expects that under normal market conditions the Fund will invest at least 75% of its corporate debt securities assets (including zero coupon and payment-in-kind securities) in issuances that have at least $100,000,000 par amount outstanding in developed countries or at least $200,000,000 par amount outstanding in emerging market countries.

[13] U.S. government securities include U.S. Treasury obligations and securities issued or guaranteed by various agencies of the U.S. government, or by various instrumentalities which have been established or sponsored by the U.S. government. U.S. Treasury obligations are backed by the ''full faith and credit'' of the U.S. government. Securities issued or guaranteed by federal agencies and U.S. government sponsored instrumentalities may or may not be backed by the full faith and credit of the U.S. government.

[14] Inflation-indexed bonds (other than municipal inflation-indexed bonds and certain corporate inflation-indexed bonds) are fixed income securities whose principal value is periodically adjusted according to the rate of inflation (*e.g.,* Treasury Inflation Protected Securities (''TIPS'')). Municipal inflation-indexed securities are municipal bonds that pay coupons based on a fixed rate plus the Consumer Price Index for All Urban Consumers (''CPI''). With regard to municipal inflation-indexed bonds and certain corporate inflation-indexed bonds, the inflation adjustment is reflected in the semi-annual coupon payment.

[15] Municipal Bonds are debt securities issued by or on behalf of states, local governments, territories and possessions of the United States and the District of Columbia and their political subdivisions, agencies, and instrumentalities, the payments from which, in the opinion of bond counsel to the issuer, are excludable from gross income for Federal Income tax purposes, or that pay interest excludable from gross income for purposes of state and local income taxes of the designated state and/or allow the value of the Fund's shares to be exempt from state and local taxes of the designated state. The Fund will primarily invest in Municipal Bonds in developed countries, but may also invest in Municipal Bonds in emerging markets. The Fund will invest its Municipal Bond assets in issuances of at least $10,000,000. The Fund may invest in Municipal Bonds of any quality, rated or unrated, including those that are rated below-investment grade, or if unrated, determined by the Investment Adviser to be of comparable quality. The Fund will primarily invest in investment-grade Municipal Bonds.

[16] Tender option bonds are created by depositing intermediate- or long-term, fixed-rate or variable rate, municipal bonds into a trust and issuing two classes of trust interests (or ''certificates'') with varying economic interests to investors. Holders of the first class of trust interests, or floating rate certificates, receive tax-exempt interest based on short-term rates and may tender the certificate to the trust at par. As consideration for providing the tender option, the trust sponsor (typically a bank, broker-dealer, or other financial institution) receives periodic fees. The trust pays the holders of the floating rate certificates from proceeds of a remarketing of the certificates or from a draw on a liquidity facility provided by the sponsor. The Fund investing in a floating rate certificate effectively holds a demand obligation that bears interest at the prevailing short-term tax-exempt rate. The floating rate certificate is typically an eligible security for money market funds. Holders of the second class of interests, sometimes called the residual income certificates, are entitled to any tax-exempt interest received by the trust that is not payable to floating rate certificate holders, and bear the risk that the underlying municipal bonds decline in value.

[17] Cash equivalents in which the Fund may invest will be U.S. Treasury Bills, investment grade commercial paper, cash, and Short Term Investment Funds (''STIFs''). STIFs are a type of fund that invests in short-term investments of high quality and low risk.

[18] Agency securities for these purposes generally includes securities issued by the following entities: Government National Mortgage Association (Ginnie Mae), Federal National Mortgage Association (Fannie Mae), Federal Home Loan Banks (FHLBanks), Federal Home Loan Mortgage Corporation (Freddie Mac), Farm Credit System (FCS) Farm Credit Banks (FCBanks), Student Loan Marketing Association (Sallie Mae), Resolution Funding Corporation (REFCORP), Financing Corporation (FICO), and the FCS Financial Assistance Corporation (FAC). Agency securities can include, but are not limited to, mortgage-backed securities.

[19] The MBS in which the Fund may invest may also include residential mortgage-backed securities (''RMBS''), collateralized mortgage obligations (''CMOs'') and commercial mortgage-backed securities (''CMBS''). The ABS in which the Fund may invest include collateralized debt obligations (''CDOs''). CDOs include collateralized bond obligations (''CBOs''), collateralized loan obligations (''CLOs'') and other similarly structured securities. A CBO is a trust which is backed by a diversified pool of high risk, below investment grade fixed income securities. A CLO is a trust typically collateralized by a pool of loans, which may include domestic and foreign senior secured loans, senior unsecured loans, and subordinate corporate loans, including loans that may be rated below investment grade or equivalent unrated loans. Specifically, the Exchange notes that such ABS are bonds backed by pools of loans or other receivables and are securitized by a wide variety of assets that are generally broken into three categories: Consumer, commercial, and corporate. The consumer category includes credit card, auto loan, student loan, and timeshare loan ABS. The commercial category includes trade receivables, equipment leases, oil receivables, film receivables, rental cars, aircraft securitizations, ship and container securitizations, whole business securitizations, and diversified payment right securitizations. Corporate ABS include cash flow collateralization loan obligations, collateralized by both middle market and broadly syndicated bank loans. ABS are issued through special purpose vehicles that are bankruptcy remote from the issuer of the collateral. The credit quality of an ABS tranche depends on the performance of the underlying assets and the structure. To protect ABS investors from the possibility that some borrowers could miss payments or even default on their loans, ABS include various forms of credit enhancement.

[20] The Fund will seek to obtain exposure to U.S. agency mortgage pass-through securities primarily through the use of ''to-be-announced'' or ''TBA transactions.'' ''TBA'' refers to a commonly used mechanism for the forward settlement of U.S. agency mortgage pass-through securities, and not to a separate type of mortgage-backed security. Most transactions in mortgage pass-through securities occur through the use of TBA transactions. TBA transactions generally are conducted in accordance with widely-accepted guidelines which establish commonly observed terms and conditions for execution, settlement and delivery.

[21] Repurchase agreements are fixed-income securities in the form of agreements backed by collateral. These agreements, which may be viewed as a type of secured lending by the Fund, typically involve the acquisition by the Fund of securities from the selling institution (such as a bank or a broker-dealer), coupled with the agreement that the selling institution will repurchase the underlying securities at a specified price and at a fixed time in the future (or on demand). The Fund may accept a wide variety of underlying securities as collateral for the repurchase agreements entered into by the Fund. Such collateral may include U.S. government securities, corporate obligations, equity securities, municipal debt securities, asset- and mortgage-backed securities, convertible securities and other fixed-income securities. Any such securities serving as collateral are marked-to-market daily in order to maintain full collateralization (typically purchase price plus accrued interest).

[22] Commercial instruments include commercial paper, master notes, asset-backed commercial paper and other short-term corporate instruments. Commercial paper normally represents short-term unsecured promissory notes issued in bearer form by banks or bank holding companies, corporations, finance companies and other issuers. Commercial paper may be traded in the secondary market after its issuance. Master notes are demand notes that permit the investment of fluctuating amounts of money at varying rates of interest pursuant to arrangements with issuers who meet the quality criteria of the Fund. Master notes are generally illiquid and therefore subject to the Fund's percentage limitations for investments in illiquid securities. Asset-backed commercial paper is issued by a special purpose entity that is organized to issue the commercial paper and to purchase trade receivables or other financial assets.

[23] Zero-coupon and payment-in-kind securities are debt securities that do not make regular cash interest payments. Zero-coupon securities are sold at a deep discount to their face value. Payment-in-kind securities pay interest through the issuance of additional securities.

[24] Convertible securities include bonds, debentures, notes and other securities that may be converted into a prescribed amount of common stock or other equity securities at a specified price and time. The Fund may invest in convertible securities traded on an exchange or OTC. The convertible securities in which the Fund may invest will be converted into a prescribed amount of common stock or other equity securities (i) whose principal market is a member of the Intermarket Surveillance Group (''ISG'') [sic], or (ii) subject to the Fund's 10% limit on equity securities whose principal market is not a member of the ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

as step-up bonds);[25] bank capital;[26] bank instruments, including certificates of deposit (''CDs''),[27] time deposits and bankers' acceptances from U.S. banks;[28] debtor-in-possession financings;[29] participations in and assignments of bank loans or corporate loans, which loans include senior loans,[30] syndicated bank loans, junior loans,[31] bridge loans,[32] unfunded commitments,[33] revolving credit facilities,[34] and participation interests[35].

With respect to Debt Instrument investments, the Fund may invest in restricted securities (Rule 144A and Regulation S securities[36]), which are subject to legal restrictions on their sale.

In addition, with respect to Debt Instrument investments, the Fund may, without limitation, seek to obtain market exposure to the securities in which it primarily invests by entering into a series of purchase and sale contracts or by using other investment techniques (such as buy backs and dollar rolls).

The Fund may also use leverage to the extent permitted under the 1940 Act by entering into reverse repurchase agreements and borrowing transactions (principally lines of credit) for investment purposes. The Fund's exposure to reverse repurchase agreements will be covered by securities having a value equal to or greater than such commitments. Under the 1940 Act, reverse repurchase agreements are considered borrowings. Although there is no limit on the percentage of Fund assets that can be used in connection with reverse repurchase agreements, the Fund does not expect to engage, under normal circumstances, in reverse repurchase agreements with respect to more than 33⅓% of its assets.

Other Investments of the Fund

While under normal market conditions the Fund will invest at least 80% of its assets pursuant to the 80% Policy described above, the Fund may invest its remaining assets in the securities and financial instruments described below.

The Fund may invest in exchange-traded and OTC hybrid instruments, which combine a traditional stock, bond, or commodity with an option or forward contract. Generally, the principal amount, amount payable upon maturity or redemption, or interest rate of a hybrid is tied (positively or negatively) to the price of some commodity, currency or securities index or another interest rate or some other economic factor (''underlying benchmark'').[37]

The Fund is permitted to invest in structured notes, which are debt obligations that also contain an embedded derivative component with characteristics that adjust the obligation's risk/return profile. Generally, the performance of a structured note will track that of the underlying debt obligation and the derivative embedded within it.

The Fund may invest in credit-linked notes, which are a type of structured note.[38]

The Fund may invest in risk-linked securities (''RLS''), which are a form of derivative issued by insurance companies and insurance-related special purpose vehicles that apply securitization techniques to catastrophic property and casualty damages.[39]

[25] The preferred securities in which the Fund may invest include preferred stock, contingent capital securities, contingent convertible securities, capital securities, and hybrid securities of debt and preferred stock. The Fund may invest in preferred securities traded on an exchange or OTC. Preferred securities pay fixed or adjustable rate dividends to investors, and have ''preference'' over common stock in the payment of dividends and the liquidation of a company's assets. The Fund will primarily invest in preferred securities that are either exchange-traded, or are Trade Reporting and Compliance Engine-eligible (''TRACE-eligible'') and settled via the Depository Trust Company (''DTC''). The Fund may invest in step-up bonds traded on an exchange or OTC.

[26] There are two common types of bank capital: Tier I and Tier II. Bank capital is generally, but not always, of investment grade quality. Tier I securities are typically preferred stock or contingent capital securities. Tier I securities are often perpetual or long-dated (with no maturity date). Tier II securities are typically subordinated debt securities.

[27] A CD is a negotiable interest-bearing instrument with a specific maturity.

[28] A bankers' acceptance is a bill of exchange or time draft drawn on and accepted by a commercial bank.

[29] Debtor-in-possession financing (''DIP financing'') is a special form of financing provided for companies in financial distress, typically during restructuring under corporate bankruptcy law (such as Chapter 11 bankruptcy under the U.S. Code). Usually, DIP financing is considered senior to all other debt, equity, and any other securities issued by the distressed company.

[30] Senior loans are business loans made to borrowers that may be U.S. or foreign corporations, partnerships, or other business entities. The interest rates on senior loans periodically are adjusted to a generally recognized base rate such as the London Interbank Offered Rate (LIBOR) or the prime rate as set by the Federal Reserve. Senior loans typically are secured by specific collateral of the borrower and hold the most senior position in the borrower's capital structure or share the senior position with the borrower's other senior debt securities.

[31] The Fund may invest in secured and unsecured junior loans.

[32] Bridge loans are short-term loan arrangements (*e.g.,* maturities that are generally less than one year) typically made by a borrower following the failure of the borrower to secure other intermediate-term or long-term permanent financing. A bridge loan remains outstanding until more permanent financing, often in the form of high yield notes, can be obtained. Most bridge loans have a step-up provision under which the interest rate increases incrementally the longer the loan remains outstanding so as to incentivize the borrower to refinance as quickly as possible. In exchange for entering into a bridge loan, the Fund typically will receive a commitment fee and interest payable under the bridge loan and may also have other expenses reimbursed by the borrower. Bridge loans may be subordinate to other debt and generally are unsecured.

[33] Unfunded commitments are contractual obligations pursuant to which the Fund agrees in writing to make one or more loans up to a specified amount at one or more future dates. The underlying loan documentation sets out the terms and conditions of the lender's obligation to make the loans as well as the economic terms of such loans. The portion of the amount committed by a lender that the borrower has not drawn down is referred to as ''unfunded.'' Loan commitments may be traded in the secondary market through dealer desks at large commercial and investment banks although these markets are generally not considered liquid.

[34] Revolving credit facilities (''revolvers'') are borrowing arrangements in which the lender agrees to make loans up to a maximum amount upon demand by the borrower during a specified term. As the borrower repays the loan, an amount equal to the repayment may be borrowed again during the term of the revolver. Revolvers usually provide for floating or variable rates of interest.

[35] The Fund normally will invest at least 75% of its bank loan or corporate loan assets, which includes senior loans, syndicated bank loans, junior loans, bridge loans, unfunded commitments, revolvers and participation interests, in issuances that have at least $100 million par amount outstanding.

[36] The Fund will invest in Rule 144A securities that are TRACE-eligible.

[37] Certain hybrid instruments may provide exposure to the commodities markets. These are derivative securities with one or more commodity-linked components that have payment features similar to commodity futures contracts, commodity options, or similar instruments. Commodity-linked hybrid instruments may be either equity or debt securities, and are considered hybrid instruments because they have both security and commodity-like characteristics. A portion of the value of these instruments may be derived from the value of a commodity, futures contract, index or other economic variable. The Fund would only invest in commodity-linked hybrid instruments that qualify, under applicable rules of the Commodity Futures Trading Commission, for an exemption from the provisions of the Commodity Exchange Act (7 U.S.C. 1).

[38] The difference between a credit default swap and a credit-linked note is that the seller of a credit-linked note receives the principal payment from the buyer at the time the contract is originated. Through the purchase of a credit-linked note, the buyer assumes the risk of the reference asset and funds this exposure through the purchase of the note. The buyer takes on the exposure to the seller to the full amount of the funding it has provided. The seller has hedged its risk on the reference asset without acquiring any additional credit exposure. The Fund has the right to receive periodic interest payments from the issuer of the credit-linked note at an agreed-upon interest rate and a return of principal at the maturity date.

[39] RLS are typically debt obligations for which the return of principal and the payment of interest are contingent on the non-occurrence of a pre-defined ''trigger event.'' Depending on the specific terms and structure of the RLS, this trigger could be the result of a hurricane, earthquake or some other catastrophic event. Insurance companies securitize this risk to transfer to the capital markets the truly catastrophic part of the risk exposure. A typical RLS provides for income and return of capital similar to other fixed-income investments, but would involve full or partial default if losses resulting from a

The Fund may invest a portion of its assets in high-quality money market instruments, including money market mutual funds, on an ongoing basis to provide liquidity.

The Fund may invest in U.S. and foreign common stocks, both exchange-listed and OTC.

The Fund may gain exposure to commodities through the use of investments in exchange-traded products (''ETPs'')[40] and exchange-traded notes (''ETNs'').[41]

The Fund may invest in the securities of exchange-traded and OTC real estate investment trusts (''REITs'').[42]

Investment Restrictions of the Fund

The Fund may not invest more than 25% of the value of its net assets in securities of issuers in any one industry or group of industries. This restriction will not apply to obligations issued or guaranteed by the U.S. government, its agencies or instrumentalities.[43]

The Fund may invest up to 20% of its total assets in the aggregate in MBS and ABS that are privately issued, non-agency and non-government sponsored entity (''Private MBS/ABS''). Such holdings would be subject to the respective limitations on the Fund's investments in illiquid assets and high yield securities. The liquidity of such securities, especially in the case of Private MBS/ABS, will be a substantial factor in the Fund's security selection process.

The Fund may invest up to 20% of its total assets in the aggregate in participations in and assignments of bank loans or corporate loans, which loans include syndicated bank loans, junior loans, bridge loans, unfunded commitments, revolvers and participation interests (but specifically do not include senior loans), in structured notes, in credit-linked notes, in risk-linked securities, in OTC REITs, and in OTC hybrid instruments. Such holdings would be subject to the respective limitations on the Fund's investments in illiquid assets and high yield securities. The liquidity of such securities will be a substantial factor in the Fund's security selection process.

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including commercial instruments deemed illiquid by the Adviser.[44] The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid securities or other illiquid assets. Illiquid securities and other illiquid assets include those subject to contractual or other restrictions on resale and other instruments or assets that lack readily available markets as determined in accordance with Commission staff guidance.[45]

The Fund may invest up to 35% of its total assets in high yield debt securities (''junk bonds''), which are debt securities that are rated below-investment grade by nationally recognized statistical rating organizations such as Moody's Investors Service, Inc. (''Moody's), Standard & Poor's Rating Group (''S&P''), or Fitch Investor Services (''Fitch''), or are unrated securities that the Adviser believes are of comparable below-investment grade quality. The Fund may invest in defaulted or distressed securities that are in default at the time of investment or that default subsequent to purchase by the Fund, in which case the Adviser will determine in its sole discretion whether to hold or dispose of security, subject to the Fund's 35% limitation in high yield debt securities.

While the Fund will principally invest in debt securities listed, traded or dealt in developed markets, it may also invest in securities listed, traded or dealt in other countries, including emerging markets countries. Such securities may be denominated in foreign currencies. However, the Fund may not invest more than 35% of its total assets in debt securities and instruments that are economically tied to emerging market countries, as determined by the Adviser, and non-U.S. dollar denominated securities.[46]

The Fund may not invest more than 10% of its net assets in the aggregate in equity securities and REITs whose principal market is not a member of the ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

The Fund may not invest more than 20% of its net assets in bank capital.

The Fund will be considered diversified within the meaning of the 1940 Act.[47]

certain catastrophe exceeded a predetermined amount.

[40] Such ETPs include Trust Issued Receipts (as described in Nasdaq Rule 5720); Commodity-Based Trust Shares (as described in Nasdaq Rule 5711(d)); Currency Trust Shares (as described in Nasdaq Rule 5711(e)); Commodity Index Trust Shares (as described in Nasdaq Rule 5711(f)); and Trust Units (Nasdaq Rule 5711(i)).

[41] ETNs include Index-Linked Securities (as described in NYSE Arca Equities Rule 5.2(j)(6)). The Fund will not invest more than 20% of its net assets in leveraged or inverse-leveraged ETPs and ETNs. The Fund will not invest in non-U.S. exchange-listed ETPs and ETNs.

[42] REITs are pooled investment vehicles which invest primarily in income producing real estate or real estate related loans or interests. REITs are generally classified as equity REITs, mortgage REITs or hybrid REITs. Equity REITs invest the majority of their assets directly in real estate property and derive income primarily from the collection of rents. Equity REITs can also realize capital gains by selling properties that have appreciated in value. Mortgage REITs invest the majority of their assets in real estate mortgages and derive income from the collection of interest payments. A hybrid REIT combines the characteristics of equity REITs and mortgage REITs, generally by holding both direct ownership interests and mortgage interests in real estate.

[43] *See* Form N–1A, Item 9. The Commission has taken the position that a fund is concentrated if it invests more than 25% of the value of its total assets in any one industry. *See, e.g.,* Investment Company Act Release No. 9011 (October 30, 1975), 40 FR 54241 (November 21, 1975).

[44] In reaching liquidity decisions, the Adviser may consider the following factors: The frequency of trades and quotes for the security; the number of dealers wishing to purchase or sell the security and the number of other potential purchasers; dealer undertakings to make a market in the security; and the nature of the security and the nature of the marketplace in which it trades (*e.g.,* the time needed to dispose of the security, the method of soliciting offers and the mechanics of transfer).

[45] Long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. *See* Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), FN 34. *See also* Investment Company Act Release Nos. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding ''Restricted Securities''); and 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N–1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. *See* Investment Company Act Release Nos. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a–7 under the 1940 Act); and 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the Securities Act of 1933).

[46] Emerging market countries are countries with developing economies or markets and may include any country recognized to be an emerging market country by the International Monetary Fund, MSCI, Inc. or Standard & Poor's Corporation or recognized to be a developing country by the United Nations. Generally, the Fund considers an instrument to be economically tied to an emerging market country through consideration of some or all of the following factors: (i) Whether the issuer is the government of the emerging market country (or any political subdivision, agency, authority or instrumentality of such government), or is organized under the laws of the emerging market country; (ii) amount of the issuer's revenues that are attributable to the emerging market country; (iii) the location of the issuer's management; (iv) if the security is secured or collateralized, the country in which the security or collateral is located; and/or (v) the currency in which the instrument is denominated or currency fluctuations to which the issuer is exposed.

[47] Under the 1940 Act, for a fund to be classified as a diversified investment company, at least 75% of the value of the fund's total assets must be represented by cash and cash items (including

Continued

The Fund intends to qualify for and to elect to be treated as a regulated investment company under Subchapter M of the Internal Revenue Code.[48]

The Fund's investments will be consistent with the Fund's investment objective. The Fund's investments will not be used to enhance leverage. That is, while the Fund will be permitted to borrow as permitted under the 1940 Act, the Fund will not be operated as a ''leveraged ETF,'' *i.e.,* it will not be operated in a manner designed to seek a multiple or inverse multiple of the performance of the Fund's primary broad-based securities benchmark index (as defined in Form N–1A).[49]

The Fund's Use of Derivatives

The Fund proposes to seek certain exposures through derivative transactions as described below. The Fund may invest in the following derivative instruments: Foreign exchange forward contracts; OTC foreign exchange options; exchange-traded futures on securities, commodities, indices, interest rates and currencies; exchange-traded and OTC options on securities and indices; exchange-traded and OTC options on interest rate futures contracts; exchange-traded and OTC interest rate swaps, exchange-traded and OTC cross-currency swaps, OTC total return swaps, exchange-traded and OTC inflation swaps and exchange-traded and OTC credit default swaps; and options on such swaps (''swaptions'').[50]

Generally, derivatives are financial contracts whose value depends upon, or is derived from, the value of an underlying asset, reference rate or index, and may relate to stocks, bonds, interest rates, currencies or currency exchange rates, commodities, and related indexes. The Fund may, but is not required to, use derivative instruments for risk management purposes or as part of its investment strategies.[51] The Fund may also engage in derivative transactions for speculative purposes to enhance total return, to seek to hedge against fluctuations in securities prices, interest rates or currency rates, to change the effective duration of its portfolio, to manage certain investment risks and/or as a substitute for the purchase or sale of securities or currencies.

Investments in derivative instruments will be made in accordance with the 1940 Act and consistent with the Fund's investment objective and policies. As described further below, the Fund will typically use derivative instruments as a substitute for taking a position in the underlying asset and/or as part of a strategy designed to reduce exposure to other risks, such as interest rate or currency risk. The Fund may also use derivative instruments to enhance returns. To limit the potential risk associated with such transactions, the Fund will segregate or ''earmark'' assets determined to be liquid by the Adviser in accordance with procedures established by the Trust's Board of Trustees (the ''Board'') and in accordance with the 1940 Act (or, as permitted by applicable regulation, enter into certain offsetting positions) to cover its obligations under derivative instruments. These procedures have been adopted consistent with Section 18 of the 1940 Act and related Commission guidance. In addition, the Fund will include appropriate risk disclosure in its offering documents, including leveraging risk. Leveraging risk is the risk that certain transactions of the Fund, including the Fund's use of derivatives, may give rise to additional leverage, causing the Fund to be more volatile than if it had not been leveraged.[52] Because the markets for certain securities, or the securities themselves, may be unavailable or cost prohibitive as compared to derivative instruments, suitable derivative transactions may be an efficient alternative for the Fund to obtain the desired asset exposure.

The Adviser believes that derivatives can be an economically attractive substitute for an underlying physical security that the Fund would otherwise purchase. For example, the Fund could purchase Treasury futures contracts instead of physical Treasuries or could sell credit default protection on a corporate bond instead of buying a physical bond. Economic benefits include potentially lower transaction costs or attractive relative valuation of a derivative versus a physical bond (*e.g.,* differences in yields).

The Adviser further believes that derivatives can be used as a more liquid means of adjusting portfolio duration as well as targeting specific areas of yield curve exposure, with potentially lower transaction costs than the underlying securities (*e.g.,* interest rate swaps may have lower transaction costs than physical bonds). Similarly, money market futures can be used to gain exposure to short-term interest rates in order to express views on anticipated changes in central bank policy rates. In addition, derivatives can be used to protect client assets through selectively hedging downside (or ''tail risks'') in the Fund.

The Fund also can use derivatives to increase or decrease credit exposure. Index credit default swaps (CDX) can be used to gain exposure to a basket of credit risk by ''selling protection'' against default or other credit events, or to hedge broad market credit risk by ''buying protection.'' Single name credit default swaps (CDS) can be used to allow the Fund to increase or decrease exposure to specific issuers, saving investor capital through lower trading costs. The Fund can use total return swap contracts to obtain the total return of a reference asset or index in exchange for paying a financing cost. A total return swap may be more efficient than buying underlying securities of an index, potentially lowering transaction costs.

The Fund may attempt to reduce foreign currency exchange rate risk by entering into contracts with banks, brokers or dealers to purchase or sell foreign currencies at a future date (''forward contracts'').[53]

The Adviser believes that the use of derivatives will allow the Fund to selectively add diversifying sources of return from selling options. Option purchases and sales can also be used to hedge specific exposures in the portfolio, and can provide access to return streams available to long-term

receivables), government securities, securities of other investment companies, and securities of other issuers, which for the purposes of this calculation are limited in respect of any one issuer to an amount (valued at the time of investment) not greater in value than 5% of the fund's total assets and to not more than 10% of the outstanding voting securities of such issuer.

[48] 26 U.S.C. 851.

[49] The Fund's broad-based securities benchmark index will be the Bloomberg Barclays U.S. Aggregate Bond 1–3 Total Return Index.

[50] Options on swaps are traded OTC. In the future, in the event that there are exchange-traded options on swaps, the Fund may invest in these instruments.

[51] The Fund will seek, where possible, to use counterparties whose financial status is such that the risk of default is reduced; however, the risk of losses resulting from default is still possible. The Adviser will monitor the financial standing of counterparties on an ongoing basis. This monitoring may include information provided by credit agencies, as well as the Adviser's credit analysts and other team members who evaluate approved counterparties using various methods of analysis, including but not limited to earnings updates, the counterparty's reputation, the Adviser's past experience with the broker-dealer, market levels for the counterparty's debt and equity, the counterparty's liquidity and its share of market participation.

[52] To mitigate leveraging risk, the Adviser will segregate or ''earmark'' liquid assets or otherwise cover the transactions that may give rise to such risk.

[53] A foreign currency forward contract is a negotiated agreement between the contracting parties to exchange a specified amount of currency at a specified future time at a specified rate. The rate can be higher or lower than the spot rate between the currencies that are the subject of the contract.

investors such as the persistent difference between implied and realized volatility. Option strategies can generate income or improve execution prices (*e.g.,* covered calls).

In addition to the Fund's use of derivatives in connection with its 80% Policy, under the proposal the Fund would seek to invest in derivative instruments not based on Debt Instruments, consistent with the Fund's investment restrictions relating to exposure to those asset classes.

Valuation Methodology for Purposes of Determining Net Asset Value

The net asset value (''NAV'') of the Fund's Shares will be determined by dividing the total value of the Fund's portfolio investments and other assets, less any liabilities, by the total number of Shares outstanding. Fund Shares will be valued as of the close of regular trading (normally 4:00 p.m., Eastern Time (''E.T.'')) (the ''NYSE Close'') on each day the New York Stock Exchange (''NYSE'') is open (''Business Day''). Information that becomes known to the Fund or its agents after the NAV has been calculated on a particular day will not generally be used to retroactively adjust the price of a portfolio asset or the NAV determined earlier that day. The Fund reserves the right to change the time its NAV is calculated if the Fund closes earlier, or as permitted by the Commission.

For purposes of calculating NAV, portfolio securities and other assets for which market quotes are readily available will be valued at market value. Market value will generally be determined on the basis of last reported sales prices, or if no sales are reported, then based on quotes obtained from a quotation reporting system, established market makers, or pricing services. Domestic and foreign fixed income securities and non-exchange-traded derivatives will normally be valued on the basis of quotes obtained from brokers and dealers or pricing services using data reflecting the earlier closing of the principal markets for those assets. Prices obtained from independent pricing services use information provided by market makers or estimates of market values obtained from yield data relating to investments or securities with similar characteristics. Exchange-traded options and options on futures will generally be valued at the settlement price determined by the applicable exchange.

Derivatives for which market quotes are readily available will be valued at market value. Local closing prices will be used for all instrument valuation purposes. Futures will be valued at the last reported sale or settlement price on the day of valuation. Swaps traded on exchanges such as the Chicago Mercantile Exchange (''CME'') or the Intercontinental Exchange (''ICE–US'') will use the applicable exchange closing price where available.

Foreign currency-denominated derivatives will generally be valued as of the respective local region's market close.

With respect to specific derivatives:

- Currency spot and forward rates from major market data vendors [54] will generally be determined as of the NYSE Close.
- Exchange-traded futures will generally be valued at the settlement price of the relevant exchange.
- A total return swap on an index will be valued at the publicly available index price. The index price, in turn, is determined by the applicable index calculation agent, which generally values the securities underlying the index at the last reported sale price.
- Equity total return swaps will generally be valued using the actual underlying equity at local market closing, while bank loan total return swaps will generally be valued using the evaluated underlying bank loan price minus the strike price of the loan.
- Exchange-traded non-equity options (for example, options on bonds, Eurodollar options, and U.S. Treasury options), index options, and options on futures will generally be valued at the official settlement price determined by the relevant exchange, if available.
- OTC and exchange-traded equity options will generally be valued on a basis of quotes obtained from a quotation reporting system, established market makers, or pricing services or at the settlement price of the applicable exchange.
- OTC foreign currency (FX) options will generally be valued by pricing vendors.
- All other OTC and exchange-traded swaps such as interest rate swaps, inflation swaps, swaptions, credit default swaps, and CDX/CDS will generally be valued by pricing services or at the settlement price of the applicable exchange.

Exchange-traded equity securities (including common stocks, ETPs, ETFs, ETNs, CEFs, exchange-traded convertible securities, REITs, and preferred securities) will be valued at the official closing price or the last trading price on the exchange or market on which the security is primarily traded at the time of valuation. If no sales or closing prices are reported during the day, exchange-traded equity securities will generally be valued at the closing bid price on the exchange or market on which the security is primarily traded, or using other market information obtained from quotation reporting systems, established market makers, or pricing services. Investment company securities that are not exchange-traded will be valued at NAV. Equity securities traded OTC will be valued based on price quotations obtained from a broker-dealer who makes markets in such securities or other equivalent indications of value provided by a third-party pricing service. Structured notes, exchange-traded and OTC hybrids and RLS will be valued based on prices obtained from an independent pricing vendor such as IDC or Reuters or on the basis of prices obtained from brokers and dealers. Debt Instruments will generally be valued on the basis of independent pricing services or quotes obtained from brokers and dealers.

If a foreign security's value has materially changed after the close of the security's primary exchange or principal market but before the NYSE Close, the security will be valued at fair value based on procedures established and approved by the Board. Foreign securities that do not trade when the NYSE is open will also be valued at fair value.

The Board has adopted policies and procedures for the valuation of the Fund's investments (the ''Valuation Procedures''). Pursuant to the Valuation Procedures, the Board has delegated to a valuation committee, consisting of representatives from Guggenheim's investment management, fund administration, legal and compliance departments (the ''Valuation Committee''), the day-to-day responsibility for implementing the Valuation Procedures, including, under most circumstances, the responsibility for determining the fair value of the Fund's securities or other assets. Valuations of the Fund's securities are supplied primarily by pricing services appointed pursuant to the processes set forth in the Valuation Procedures. The Valuation Committee convenes monthly, or more frequently as needed and will review the valuation of all assets which have been fair valued for reasonableness. The Fund's officers, through the Valuation Committee and consistent with the monitoring and review responsibilities set forth in the Valuation Procedures, regularly review

[54] Major market data vendors may include, but are not limited to: Thomson Reuters, JPMorgan Chase PricingDirect Inc., Markit Group Limited, Bloomberg, Interactive Data Corporation, or other major data vendors.

procedures used by, and valuations provided by, the pricing services.

Debt securities with a maturity of greater than 60 days at acquisition will be valued at prices that reflect broker/dealer supplied valuations or are obtained from independent pricing services, which may consider the trade activity, treasury spreads, yields or price of bonds of comparable quality, coupon, maturity, and type, as well as prices quoted by dealers who make markets in such securities. Short-term securities with remaining maturities of 60 days or less will be valued at amortized cost, provided such amount approximates market value. Money market instruments will be valued at NAV.

Generally, trading in foreign securities markets is substantially completed each day at various times prior to the close of the NYSE. The values of foreign securities are determined as of the close of such foreign markets or the close of the NYSE, if earlier. All investments quoted in foreign currency will be valued in U.S. dollars on the basis of the foreign currency exchange rates prevailing at the close of U.S. business at 4:00 p.m. E.T. The Valuation Committee will determine the current value of such foreign securities by taking into consideration certain factors which may include those discussed above, as well as the following factors, among others: The value of the securities traded on other foreign markets, closed-end fund trading, foreign currency exchange activity, and the trading prices of financial products that are tied to foreign securities. In addition, under the Valuation Procedures, the Valuation Committee and the Adviser are authorized to use prices and other information supplied by a third party pricing vendor in valuing foreign securities.

Investments for which market quotations are not readily available will be fair valued as determined in good faith by the Adviser, subject to review by the Valuation Committee, pursuant to methods established or ratified by the Board. Valuations in accordance with these methods are intended to reflect each security's (or asset's) ''fair value.'' Each such determination will be based on a consideration of all relevant factors, which are likely to vary from one pricing context to another. Examples of such factors may include, but are not limited to: Market prices; sales price; broker quotes; and models which derive prices based on inputs such as prices of securities with comparable maturities and characteristics, or based on inputs such as anticipated cash flows or collateral, spread over Treasuries, and other information analysis.

Investments initially valued in currencies other than the U.S. dollar will be converted to the U.S. dollar using exchange rates obtained from pricing services. As a result, the NAV of the Fund's Shares may be affected by changes in the value of currencies in relation to the U.S. dollar. The value of securities traded in markets outside the United States or denominated in currencies other than the U.S. dollar may be affected significantly on a day that the NYSE is closed. As a result, to the extent that the Fund holds foreign (non-U.S.) securities, the NAV of the Fund's Shares may change when an investor cannot purchase, redeem or exchange shares.

Derivatives Valuation Methodology for Purposes of Determining Intra-Day Indicative Value

On each Business Day, before commencement of trading in Fund Shares on the Exchange, the Fund will disclose on its Web site the identities and quantities of the portfolio instruments and other assets held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the Business Day.

In order to provide additional information regarding the intra-day value of Shares of the Fund, the Exchange or a market data vendor will disseminate every 15 seconds through the facilities of the Consolidated Tape Association (''CTA'') or other widely disseminated means an updated Intra-day Indicative Value (''IIV'') for the Fund as calculated by a third party market data provider.

A third party market data provider will calculate the IIV for the Fund. For the purposes of determining the IIV, the third party market data provider's valuation of derivatives is expected to be similar to their valuation of all securities. The third party market data provider may use market quotes if available or may fair value securities against proxies (such as swap or yield curves).

With respect to specific derivatives:

- Foreign currency derivatives, including foreign exchange forward contracts, foreign exchange options and currency futures, may be valued intraday using market quotes, or another proxy as determined to be appropriate by the third party market data provider.
- Futures may be valued intraday using the relevant futures exchange data, or another proxy as determined to be appropriate by the third party market data provider.
- Interest rate swaps and cross-currency swaps may be mapped to a swap curve and valued intraday based on changes of the swap curve, or another proxy as determined to be appropriate by the third party market data provider.
- Index credit default swaps (such as, CDX/CDS) may be valued using intraday data from market vendors, or based on underlying asset price, or another proxy as determined to be appropriate by the third party market data provider.
- Total return swaps may be valued intraday using the underlying asset price, or another proxy as determined to be appropriate by the third party market data provider.
- Exchange listed options may be valued intraday using the relevant exchange data, or another proxy as determined to be appropriate by the third party market data provider.
- OTC options and swaptions may be valued intraday through option valuation models (*e.g.,* Black-Scholes) or using exchange traded options as a proxy, or another proxy as determined to be appropriate by the third party market data provider.

Disclosed Portfolio

The Fund's disclosure of derivative positions in the Disclosed Portfolio will include information that market participants can use to value these positions intraday. On a daily basis, the Adviser will disclose on the Fund's Web site the following information regarding each portfolio holding, as applicable to the type of holding: Ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding, such as the type of swap); the identity of the security, commodity, index or other asset or instrument underlying the holding, if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in the Fund's portfolio. The Web site information will be publicly available at no charge.

Impact on Arbitrage Mechanism

The Adviser believes there will be minimal, if any, impact to the arbitrage mechanism as a result of the use of derivatives. Market makers and participants should be able to value derivatives as long as the positions are disclosed with relevant information. The Adviser believes that the price at which Shares trade will continue to be disciplined by arbitrage opportunities

created by the ability to purchase or redeem creation Shares at their NAV, which should ensure that Shares will not trade at a material discount or premium in relation to their NAV.

The Adviser does not believe there will be any significant impacts to the settlement or operational aspects of the Fund's arbitrage mechanism due to the use of derivatives. Because derivatives generally are not eligible for in-kind transfer, they will typically be substituted with a ''cash in lieu'' amount when the Fund processes purchases or redemptions of creation units in-kind.

Creation and Redemption of Shares

Investors may create or redeem in Creation Unit size of 100,000 Shares or aggregations thereof (''Creation Unit'') through an Authorized Participant (''AP''), as described in the Registration Statement. The size of a Creation Unit is subject to change. In order to purchase Creation Units of the Fund, an investor must generally deposit a designated portfolio of securities (the ''Deposit Securities'') (and/or an amount in cash in lieu of some or all of the Deposit Securities) per each Creation Unit constituting a substantial replication, or representation, of the securities included in the Fund's portfolio as selected by the Adviser (''Fund Securities'') and generally make a cash payment referred to as the ''Cash Component.'' The list of the names and the amounts of the Deposit Securities will be made available by the Fund's Custodian through the facilities of the National Securities Clearing Corporation (''NSCC'') prior to the opening of business of the Exchange (9:30 a.m., E.T.). The Cash Component will represent the difference between the NAV of a Creation Unit and the market value of the Deposit Securities.

Shares may be redeemed only in Creation Unit size at their NAV on a day the Exchange is open for business. The Fund's custodian will make available immediately prior to the opening of the Exchange, through the facilities of NSCC, the list of the names and the amounts of the Fund Securities that will be applicable that day to redemption requests in proper form. Fund Securities received on redemption may not be identical to Deposit Securities which are applicable to purchases of Creation Units. The creation/redemption order cut-off time for the Fund will be 4:00 p.m. E.T.

Availability of Information

The Fund's Web site (*www.guggenheiminvestments.com*), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The Fund's Web site will include the ticker symbol for the Shares, CUSIP and exchange information, along with additional quantitative information updated on a daily basis, including, for the Fund: (1) Daily trading volume, the prior Business Day's reported NAV, closing price and mid-point of the bid/ask spread at the time of calculation of such NAV (the ''Bid/Ask Price''),[55] and a calculation of the premium and discount of the Bid/Ask Price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for the most recently completed calendar year and each of the four most recently completed calendar quarters since that year (or the life of the Fund if shorter).

On each Business Day, before commencement of trading in Shares in the Regular Market Session [56] on the Exchange, the Fund will disclose on its Web site the identities and quantities of the portfolio of securities and other assets (the ''Disclosed Portfolio'' as such term is defined in Nasdaq Rule 5735(c)(2)) held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the Business Day.[57]

In addition to disclosing the identities and quantities of the portfolio of securities and other assets in the Disclosed Portfolio, the Fund also will disclose on a daily basis on its Web site the following information, as applicable to the type of holding: Ticker symbol, if any, CUSIP number or other identifier, if any; a description of the holding (including the type of holding, such as, a type of swap), quantity held (as measured by, for example, par value, number of shares or units); identity of the security, index, or other asset or instrument underlying the holding, if any; for options, the options strike price; quantity held (as measured by, for example, par value, notional value, or number of shares, contracts or units); maturity date, if any; coupon rate, if any; market value of the holding; and percentage weighting of the holding in the Fund's portfolio. The Web site and information will be publicly available at no charge.

In addition, to the extent the Fund permits full or partial creations in-kind, a basket composition file, which will include the security names and share quantities to deliver (along with requisite cash in lieu) in exchange for Shares, together with estimates and actual Cash Components, will be publicly disseminated daily prior to the opening of the Exchange via the NSCC. The basket will equal a Creation Unit.

In addition, for the Fund, an estimated value, defined in Rule 5735(c)(3) as the ''Intraday Indicative Value,'' that reflects an estimated intraday value of the Fund's Disclosed Portfolio, will be disseminated by a major market data vendor per the terms of a data services agreement that will be finalized with the Adviser prior to the Fund's launch (the ''IOPV Vendor''). Moreover, the Intraday Indicative Value, available on the NASDAQ Information LLC proprietary index data service,[58] will be calculated by the IOPV Vendor based upon the sum of the current value for the components of the Disclosed Portfolio and the estimated cash amount per share of the Fund, divided by the total amount of outstanding Shares. The Intraday Indicative Value will be updated and widely disseminated by the IOPV Vendor and broadly displayed at least every 15 seconds during the Regular Market Session. The Intraday Indicative Value will be calculated based on the IOPV Vendor's calculations. If there is an issue or problem with any of the components of the calculation, the previously calculated Intraday Indicative Value will be disseminated until such issue or problem is resolved. With respect to equity securities, if trading in a component of the Disclosed Portfolio is halted while the market is open, the last traded price for that security will be used in the calculation until trading resumes. If trading is halted before the

[55] The Bid/Ask Price of the Fund will be determined using the mid-point of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

[56] *See* Nasdaq Rule 4120(b)(4) (describing the three trading sessions on the Exchange: (1) Pre-Market Session from 4 a.m. to 9:30 a.m. E.T.; (2) Regular Market Session from 9:30 a.m. to 4 p.m. or 4:15 p.m. E.T.; and (3) Post-Market Session from 4 p.m. or 4:15 p.m. to 8 p.m. E.T.).

[57] Under accounting procedures to be followed by the Fund, trades made on the prior Business Day (''T'') will be booked and reflected in NAV on the current Business Day (''T+1''). Notwithstanding the foregoing, portfolio trades that are executed prior to the opening of the Exchange on any Business Day may be booked and reflected in NAV on such Business Day. Accordingly, the Fund will be able to disclose at the beginning of the Business Day the portfolio that will form the basis for the NAV calculation at the end of the Business Day.

[58] Currently, the Nasdaq Global Index Data Service (''GIDS'') is the Nasdaq global index data feed service, offering real-time updates, daily summary messages, and access to widely followed indexes and Intraday Indicative Values for ETFs. GIDS provides investment professionals with the daily information needed to track or trade Nasdaq indexes, listed ETFs, or third-party partner indexes and ETFs.

market is open, the previous day's last sale price will be used. For components of the Disclosed Portfolio that are not U.S. listed, the last sale price is used, after being converted into U.S. Dollars, when the local market is open. When the local market closes, the closing price for the component of the Disclosed Portfolio continues to be updated by the applicable exchange rate.

The dissemination of the Intraday Indicative Value, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of the Fund on a daily basis and will provide a close estimate of that value throughout the trading day.

Intraday executable price quotations on certain Debt Instruments and other assets not traded on an exchange will be available from major broker-dealer firms or market data vendors, as well as from automated quotation systems, published or other public sources, or online information services. Additionally, the Trade Reporting and Compliance Engine (''TRACE'') of the Financial Industry Regulatory Authority (''FINRA'') will be a source of price information for corporate bonds, privately-issued securities (including Rule 144A securities), MBS, ABS, CDOs and CBOs to the extent transactions in such securities are reported to TRACE.[59] Intra-day, executable price quotations on the securities and other assets held by the Fund, as well as closing price information, will be available from major broker-dealer firms or on the exchange on which they are traded, as applicable. Intra-day and closing price information related to U.S. government securities, money market instruments (including money market mutual funds), and other short-term investments held by the Fund also will be available through subscription services, such as Bloomberg, Markit and Thomson Reuters, which can be accessed by APs and other investors. Electronic Municipal Market Access (''EMMA'') will be a source of price information for municipal bonds.

Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume for the Shares will be published daily in the financial section of newspapers. Quotation and last sale information will be available via the CTA high-speed line for the Shares and for the following U.S. exchange-traded securities: Common stocks, hybrid instruments, convertible securities, preferred securities, REITs, CEFs, ETFs, ETPs, and ETNs. Price information for foreign exchange-traded stocks will be available from the applicable foreign exchange and from major market data vendors. Price information for exchange-traded derivative instruments will be available from the applicable exchange and from major market data vendors. Price information for OTC REITs, OTC common stocks, OTC preferred securities, OTC convertible securities, OTC step-up bonds, OTC CEFs, OTC options, money market instruments, forwards, structured notes, credit linked notes, risk-linked securities, OTC derivative instruments and OTC hybrid instruments will be available from major market data vendors. Price information for restricted securities, including Regulation S and Rule 144A securities, will be available from major market data vendors. Intra-day and closing price information for exchange-traded options and futures will be available from the applicable exchange and from major market data vendors. In addition, price information for U.S. exchange-traded options is available from the Options Price Reporting Authority. Quotation information from brokers and dealers or independent pricing services will be available for Debt Instruments.

Additional information regarding the Fund and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions and taxes, will be included in the Registration Statement. Investors also will be able to obtain the Fund's Statement of Additional Information (''SAI''), the Fund's Shareholder Reports, and its Trust's Form N–CSR and Form N–SAR, each of which is filed twice a year, except the SAI, which is filed at least annually. The Fund's SAI and Shareholder Reports will be available free upon request from the Trust, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission's Web site at *www.sec.gov.*

Initial and Continued Listing of the Fund's Shares

The Shares will conform to the initial and continued listing criteria applicable to Managed Fund Shares, as set forth under Rule 5735. The Exchange represents that, for initial and continued listing, the Fund will be in compliance with Rule 10A–3 [60] under the Exchange Act. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.

Trading Halts of the Fund's Shares

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. Nasdaq will halt trading in the Shares under the conditions specified in Nasdaq Rules 4120 and 4121, including the trading pauses under Nasdaq Rules 4120(a)(11) and (12). Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments constituting the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares also will be subject to Rule 5735(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted.

Trading Rules

Nasdaq deems the Shares to be equity securities, thus rendering trading in the Shares subject to Nasdaq's existing rules governing the trading of equity securities. Nasdaq will allow trading in the Shares from 4:00 a.m. until 8:00 p.m. E.T. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in Nasdaq Rule 5735(b)(3), the minimum price variation for quoting and entry of orders in Managed Fund Shares traded on the Exchange is $0.01.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by both Nasdaq and FINRA, on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[61] The Exchange represents that these procedures are adequate to properly monitor Exchange

[59] Broker-dealers that are FINRA member firms have an obligation to report transactions in specified debt securities to TRACE to the extent required under applicable FINRA rules. Generally, such debt securities will have at issuance a maturity that exceeds one calendar year.

[60] *See* 17 CFR 240.10A–3.

[61] FINRA surveils trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations. FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and such other exchange-traded securities and instruments held by the Fund with other markets and other entities that are members of the ISG,[62] and FINRA may obtain trading information regarding trading in the Shares and other exchange-traded securities (including ETFs and preferred stock) and instruments held by the Fund from such markets and other entities. Moreover, FINRA, on behalf of the Exchange, will be able to access, as needed, trade information for certain Debt Instruments, and other debt securities held by the Fund reported to FINRA's TRACE.

In addition, the Exchange may obtain information regarding trading in the Shares and such other exchange-traded securities and instruments held by the Fund from markets and other entities that are members of ISG, which includes securities exchanges, or with which the Exchange has in place a comprehensive surveillance sharing agreement.

Not more than 10% of the net assets of the Fund in the aggregate invested in equity securities (other than non-exchange-traded investment company securities) shall consist of equity securities whose principal market is not a member of the ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement. Furthermore, not more than 10% of the net assets of the Fund in the aggregate invested in futures contracts and exchange-traded options contracts shall consist of futures contracts and exchange-traded options contracts whose principal market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

[62] For a list of the current members of ISG, *see www.isgportal.org.* The Exchange notes that not all components of the Disclosed Portfolio for the Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Circular

Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (2) Nasdaq Rule 2111A, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in the Shares to customers; (3) how information regarding the Intraday Indicative Value and the Disclosed Portfolio is disseminated; (4) the risks involved in trading the Shares during the Pre-Market and Post-Market Sessions when an updated Intraday Indicative Value will not be calculated or publicly disseminated; (5) the requirement that members purchasing Shares from the Fund for resale to investors deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Information Circular will advise members, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Fund. Members purchasing Shares from the Fund for resale to investors will deliver a prospectus to such investors. The Information Circular will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Exchange Act.

Additionally, the Information Circular will reference that the Fund is subject to various fees and expenses. The Information Circular will also disclose the trading hours of the Shares of the Fund and the applicable NAV calculation time for the Shares. The Information Circular will disclose that information about the Shares of the Fund will be publicly available on the Fund's Web site.

Continued Listing Representations

All statements and representations made in this filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets, (c) dissemination and availability of the reference asset or intraday indicative values, or (d) the applicability of Exchange listing rules shall constitute continued listing requirements for listing the Shares on the Exchange. In addition, the issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under the Nasdaq 5800 Series.

2. Statutory Basis

Nasdaq believes that the proposal is consistent with Section 6(b) of the Exchange Act, in general, and Section 6(b)(5) [63] of the Exchange Act, in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in Nasdaq Rule 5735. The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by both Nasdaq and FINRA, on behalf of the Exchange, which are designed to deter and detect violations of Exchange rules and applicable federal securities laws and are adequate to properly monitor trading in the Shares in all trading sessions. The Adviser is affiliated with a broker-dealer and have implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the Fund's portfolio. In addition, paragraph (g) of Nasdaq Rule 5735 further requires that personnel who make decisions on an open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the open-end fund's portfolio.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect

[63] 15 U.S.C. 78(f)(b)(5) [sic].

investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace.

FINRA may obtain information via ISG from other exchanges that are members of ISG. In addition, the Exchange may obtain information regarding trading in the Shares and other exchange-traded securities (including ETFs and preferred stock) and instruments held by the Fund from markets and other entities that are members of ISG, which includes securities exchanges, or with which the Exchange has in place a comprehensive surveillance sharing agreement. The Fund will limit its investments in illiquid securities or other illiquid assets to an aggregate amount of 15% of its net assets (calculated at the time of investment). The Fund also may invest directly in ETFs.

Additionally, the Fund may engage in frequent and active trading of portfolio securities to achieve its investment objective. The Fund's investments will not be used to enhance leverage. That is, while the Fund will be permitted to borrow as permitted under the 1940 Act, the Fund will not be operated as a ''leveraged ETF,'' *i.e.,* it will not be operated in a manner designed to seek a multiple or inverse multiple of the performance of the Fund's primary broad-based securities benchmark index (as defined in Form N–1A).

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily every day that the Fund is traded, and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information will be publicly available regarding the Fund and the Shares, thereby promoting market transparency. Moreover, the Intraday Indicative Value, available on the NASDAQ Information LLC proprietary index data service, will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Regular Market Session. On each Business Day, before commencement of trading in Shares in the Regular Market Session on the Exchange, the Fund will disclose on its Web site the Disclosed Portfolio of the Fund that will form the basis for the Fund's calculation of NAV at the end of the Business Day.

Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last-sale information for the Shares will be available via Nasdaq proprietary quote and trade services, as well as in accordance with the Unlisted Trading Privileges and the CTA plans for the Shares. Quotation and last sale information will be available via the CTA high-speed line for the Shares and for the following U.S. exchange-traded securities: Common stocks, hybrid instruments, convertible securities, preferred securities, REITs, CEFs, ETFs, ETPs, and ETNs. Price information for foreign exchange-traded stocks will be available from the applicable foreign exchange and from major market data vendors. Price information for exchange-traded derivative instruments will be available from the applicable exchange and from major market data vendors. Price information for OTC REITs, OTC common stocks, OTC preferred securities, OTC convertible securities, OTC step-up bonds, OTC CEFs, OTC options, money market instruments, forwards, structured notes, credit linked notes, risk-linked securities, OTC derivative instruments, and OTC hybrid instruments will be available from major market data vendors. Price information for restricted securities, including Regulation S and Rule 144A securities, will be available from major market data vendors. Intra-day and closing price information for exchange-traded options and futures will be available from the applicable exchange and from major market data vendors. In addition, price information for U.S. exchange-traded options is available from the Options Price Reporting Authority. Quotation information from brokers and dealers or independent pricing services will be available for Debt Instruments.

The Fund's Web site will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Moreover, prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Trading in Shares of the Fund will be halted under the conditions specified in Nasdaq Rules 4120 and 4121 or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, and trading in the Shares will be subject to Nasdaq Rule 5735(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the Intraday Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

For the above reasons, Nasdaq believes the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Exchange Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The Exchange believes that the proposed rule change will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2017–039 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2017–039. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2017–039, and should be submitted on or before May 24, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[64]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–08899 Filed 5–2–17; 8:45 am]

BILLING CODE 8011–01–P

[64] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80524; File No. SR–FICC–2017–002]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Designation of Longer Period for Commission Action on Proposed Rule Change To Implement the Capped Contingency Liquidity Facility in the Government Securities Division Rulebook

April 25, 2017.

On March 1, 2017, Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–FICC–2017–002 (''Proposed Rule Change'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] to implement a Capped Contingency Liquidity Facility in FICC's Government Securities Division Rulebook.[3] The Proposed Rule Change was published for comment in the **Federal Register** on March 20, 2017.[4] To date, the Commission has received one comment letter to the Proposed Rule Change.[5]

Section 19(b)(2) of the Act[6] provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this Proposed Rule Change is May 4, 2017. The Commission is extending this 45-day time period.

In order to provide the Commission with sufficient time to consider the Proposed Rule Change, the Commission finds that it is appropriate to designate a longer period within which to take action on the Proposed Rule Change. Accordingly, the

Commission, pursuant to Section 19(b)(2) of the Act,[7] designates June 18, 2017 as the date by which the Commission shall either approve, disapprove, or institute proceedings to determine whether to disapprove proposed rule change SR–FICC–2017–002.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–08907 Filed 5–2–17; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On March 1, 2017, FICC also filed this Proposed Rule Change as advance notice SR–FICC–2017–802 (''Advance Notice'') with the Commission pursuant to Section 806(e)(1) of the Dodd-Frank Wall Street Reform and Consumer Protection Act entitled the Payment, Clearing, and Settlement Supervision Act of 2010, 12 U.S.C. 5465(e)(1), and Rule 19b–4(n)(1)(i) of the Act, 17 CFR 240.19b–4(n)(1)(i). Notice of filing of the Advance Notice was published for comment in the **Federal Register** on March 15, 2017. Securities Exchange Act Release No. 80191 (March 9, 2017), 82 FR 13876 (March 15, 2017) (SR–FICC–2017–802). The Commission extended the review period of the Advance Notice from April 30, 2017 to June 29, 2017. Securities Exchange Act Release No. 80520 (April 25, 2017) (SR–FICC–2017–802). The proposal in the Proposed Rule Change and the Advance Notice shall not take effect until all regulatory actions required with respect to the proposal are completed.

[4] Securities Exchange Act Release No. 80234 (March 14, 2017), 82 FR 14401 (March 20, 2017) (SR–FICC–2017–002).

[5] *See* letter from Robert E. Pooler, Chief Financial Officer, Ronin Capital LLC, dated April 10, 2017, to Robert W. Errett, Deputy Secretary, Commission, *available at https://www.sec.gov/comments/sr-ficc-2017-002/ficc2017002.htm.* Since the proposal contained in the Proposed Rule Change was also filed as an Advance Notice, Release No. 80191, *supra* note 3, the Commission is considering all public comments received on the proposal regardless of whether the comments are submitted to the Proposed Rule Change or the Advance Notice.

[6] 15 U.S.C. 78s(b)(2).

[7] *Id.*

[8] 17 CFR 200.30–3(a)(31).

SMALL BUSINESS ADMINISTRATION

Central Valley Fund III (SBIC), L.P., License No. 09/09–0486; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Central Valley Fund III (SBIC), L.P., 1590 Drew Avenue, Suite 110, Davis, CA 95618, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concerns, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730). Central Valley Fund III (SBIC), L.P. is proposing to provide financing to LightRiver Software, Inc., a wholly owned subsidiary of LightRiver Technologies Holdings, Inc. for the acquisition of Unique Computer Software Inc., 215

Gordons Corner Road, Suite 2G, Manalapan, NJ 07726.

The proposed transaction is brought within the purview of § 107.730 of the Regulations because Central Valley Fund II (SBIC), L.P., an Associate of Central Valley Fund III (SBIC), L.P. by virtue of Common Control as defined at § 107.50, collectively holds more than 10% equity interest in LightRiver Technologies, Inc., a wholly owned subsidiary of LightRiver Technologies Holdings, Inc. Therefore, LightRiver Software, Inc. is an Associate of Central Valley Fund III (SBIC), L.P. pursuant to § 107.50.

Therefore, the proposed transaction is considered self-deal pursuant to 13 CFR 107.730 and requires a regulatory exemption. Notice is hereby given that any interested person may submit written comments on the transaction within fifteen days of the date of this publication to Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416.

Dated: April 26, 2017.

A. Joseph Shepard,

Associate Administrator for Investment and Innovation.

[FR Doc. 2017–08909 Filed 5–2–17; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Walton County & Bay County

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice of cancellation on behalf of the Florida Department of Transportation (FDOT) pursuant to federal law and a Memorandum of Understanding dated December 14, 2016 to advise the public that an Environmental Impact Statement for the proposed SR 388 from SR 79 in Bay County, Florida westward to SR 30 (US 98) in Walton County, Florida (also identified as West Bay Parkway, Segment 1 and CR 388 Segment 1) will no longer be prepared due to the implementation of the Bay-Walton Sector Plan, SAJ–114, and associated biological assessment that was completed for the study area. This is a formal cancellation of the Notice of Intent that was published in the **Federal Register** on October 4, 2011 (*Doc. No. 2011–25360*).

FOR FURTHER INFORMATION CONTACT: Mr. Jason Watts, Director, Office of Environmental Management, Florida Department of Transportation, 605 Suwannee Street, MS 37, Tallahassee, FL 32399–0450; Telephone (850) 414–4316.

SUPPLEMENTARY INFORMATION: The Notice of Intent to prepare an EIS was for an extension of SR 388 to the west from its current western terminus at SR 79 and provide a new four-lane divided highway and a new bridge across the Intracoastal Waterway (ICWW). The Notice of Intent to prepare an EIS is rescinded.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding inter-governmental consultation on Federal programs and activities apply to this program.)

Buddy Cunill,

Environmental Team Leader, Tallahassee, Florida.

[FR Doc. 2017–08910 Filed 5–2–17; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0065]

Agency Information Collection Activity Under OMB Review: Request for Employment Information in Connection With Claim for Disability Benefits

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 2, 2017.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov,* or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0065'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–5870 or email *cynthia.harvey-pryor@va.gov.* Please refer to ''OMB Control No. 2900–0065'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 44 U.S.C. 3501–21.

Title: (Request for Employment Information in Connection with Claim for Disability Benefits (VA Form 21–4192)).

OMB Control Number: 2900–0065.

Type of Review: Revision of a currently approved collection.

Abstract: VA Form 21–4192 is used to gather necessary employment information from veterans' employers so VA can determine eligibility to increased disability benefits based on unemployability.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at Volume 82 FR 12 on January 19, 2017, page 6729.

Affected Public: Individuals or Households.

Estimated Annual Burden: 15,000 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 60,000.

By direction of the Secretary.

Cynthia Harvey-Pryor,

Department Clearance Officer, Enterprise Records Service, Office of Quality and Compliance, Department of Veterans Affairs.

[FR Doc. 2017–08932 Filed 5–2–17; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0500]

Status of Dependents Questionnaire

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice; correction.

SUMMARY: The Department of Veterans Affairs (VA) published a collection of information notice in the **Federal**

Register on Monday, January 23, 2017 that contained an error. The 60-day Public Comment notice identified the wrong title for the Agency Information Collection Activity. This document serves as Notice for change of the title: ''Status of Dependents Questionnaire'' with the revised title: ''Mandatory Status of Dependents.''

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, at 202–461–5870.

Correction

In FR Doc. 2017–01398, published on Monday, January 23, 2017 at 82 FR 13, the following was in error. Pages 7917 and 7918, displayed ''Agency Information Collection Activity: Status of Dependents Questionnaire (VA Form 21–0538),'' and also under **SUPPLEMENTARY INFORMATION**: *Title:* Status of Dependents Questionnaire (VA Form 21–0538).'' Publication of the 30-day **Federal Register** Notice comment period will display the revised titles: Agency Information Collection Activity: Mandatory Status of Dependents **SUPPLEMENTARY INFORMATION:** *Title:* Mandatory Status of Dependents.''

Dated: April 26, 2017.

By direction of the Secretary.

Cynthia Harvey-Pryor,

Department Clearance Officer, Enterprise Records Service, Office of Quality and Compliance, Department of Veterans Affairs.

[FR Doc. 2017–08929 Filed 5–2–17; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0075]

Agency Information Collection Activity: Statement in Support of Claim

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice.

VA Form 21–4138 is used by claimants to provide self-certified statements in support of various types of claims processed by the agency. VA compensation and pension programs require that statements submitted by or on behalf of a claimant contain certification by the respondent that the information provided is true and correct. This form is designed to facilitate claims processing by providing a uniform format for the certification statement.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before July 3, 2017.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0075'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 632–8924 or FAX (202) 632–8925.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: Public Law 104–13; 44 U.S.C. 3501–21.

Title: Statement in Support of Claim, VA Form 21–4138.

OMB Control Number: 2900–0075.

Type of Review: Revision of an approved collection.

Abstract: VA Form 21–4138 is used by claimants to provide self-certified statements in support of various types of claims processed by the agency. VA compensation and pension programs require that statements submitted by or on behalf of a claimant contain certification by the respondent that the information provided is true and correct. This form is designed to facilitate claims processing by providing a uniform format for the certification statement.

Affected Public: Individuals or households.

Estimated Annual Burden: 188,000.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 752,000.

By direction of the Secretary:

Cynthia Harvey-Pryor,

Department Clearance Officer, Enterprise Records Service, Office of Quality and Compliance, Department of Veterans Affairs.

[FR Doc. 2017–08933 Filed 5–2–17; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0500]

Agency Information Collection Activity Under OMB Review: Mandatory Status of Dependents

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 2, 2017.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov,* or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0500'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–5870 or email *cynthia.harvey-pryor@va.gov.* Please refer to ''OMB Control No. 2900–0500'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 44 U.S.C. 3501–21.

Title: Mandatory Status of Dependents (VA Form 21–0538).

OMB Control Number: 2900–0500.

Type of Review: Revision of a currently approved collection.

Abstract: VA Form 21–0538 is used to request certification of the status of dependents for whom additional compensation is being paid to veterans. Without this information, continued entitlement to the benefits for dependents could not be determined.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at Volume 82 FR 13 on January 23, 2017, pages 7917 and 7918.

Affected Public: Individuals or Households.

Estimated Annual Burden: 14,083.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 84,500.

By direction of the Secretary.

Cynthia Harvey-Pryor,

Department Clearance Officer, Enterprise Records Service, Office of Quality and Compliance, Department of Veterans Affairs.

[FR Doc. 2017–08930 Filed 5–2–17; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–NEW]

Agency Information Collection Activity Under OMB Review: Authorization To Disclose Personal Information to a Third Party (Insurance)

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 2, 2017.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov,* or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–NEW'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–5870 or email *cynthia.harvey-pryor@va.gov.* Please refer to ''OMB Control No. 2900–NEW.''

SUPPLEMENTARY INFORMATION:

Authority: 44 U.S.C. 3501–3521.

Title: Authorization to Disclose Personal Information to a Third Party (Insurance).

OMB Control Number: 2900–NEW.

Type of Review: New collection.

Abstract: VA Form 29–0975 will be used by the Department of Veterans Affairs Insurance Center (VAIC) to enable a third party to act on behalf of the insured Veteran/beneficiary. Many of our customers are of advanced age or suffer from limiting disabilities and need assistance from a third party to conduct their affairs. The information collected provides an optional service and is not required to receive insurance benefits.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at Volume 82 FR on page 6729, January 19, 2017.

Affected Public: Individuals or households.

Estimated Annual Burden: 100 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1200.

By direction of the Secretary.

Cynthia Harvey-Pryor,

Department Clearance Officer, Enterprise Records Service, Office of Quality and Compliance, Department of Veterans Affairs.

[FR Doc. 2017–08931 Filed 5–2–17; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

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Part II

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Parts 412

Medicare Program; Inpatient Rehabilitation Facility Prospective Payment System for Federal Fiscal Year 2018; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 412

[CMS–1671–P]

RIN 0938–AS99

Medicare Program; Inpatient Rehabilitation Facility Prospective Payment System for Federal Fiscal Year 2018

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would update the prospective payment rates for inpatient rehabilitation facilities (IRFs) for federal fiscal year (FY) 2018 as required by the statute. As required by section 1886(j)(5) of the Act, this rule includes the classification and weighting factors for the IRF prospective payment system's (IRF PPS) case-mix groups and a description of the methodologies and data used in computing the prospective payment rates for FY 2018. We are also proposing to remove the 25 percent payment penalty for inpatient rehabilitation facility patient assessment instrument (IRF–PAI) late transmissions, remove the voluntary swallowing status item (Item 27) from the IRF–PAI, revise the International Classification of Diseases, 10th Revision, Clinical Modification (ICD–10–CM) diagnosis codes that are used to determine presumptive compliance under the ''60 percent rule,'' solicit comments regarding the criteria used to classify facilities for payment under the IRF PPS, provide for automatic annual updates to presumptive methodology diagnosis code lists, use height/weight items on the IRF–PAI to determine patient body mass index (BMI) greater than 50 for cases of single-joint replacement under the presumptive methodology, and revise and update quality measures and reporting requirements under the IRF quality reporting program (QRP).

DATES: To be assured consideration, comments must be received at one of the addresses provided below, not later than 5 p.m. on June 26, 2017.

ADDRESSES: In commenting, please refer to file code CMS–1671–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov*. Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1671–P, P.O. Box 8016, Baltimore, MD 21244–8016.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1671–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. By hand or courier. Alternatively, you may deliver (by hand or courier) your written comments ONLY to the following addresses prior to the close of the comment period:

a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786 7195 in advance to schedule your arrival with one of our staff members.

Comments erroneously mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT:

Gwendolyn Johnson, (410) 786–6954, for general information.

Catie Kraemer, (410) 786–0179, for information about the wage index.

Christine Grose, (410) 786–1362, for information about the quality reporting program.

Kadie Derby, (410) 786–0468, or Susanne Seagrave, (410) 786–0044, for information about the payment policies and payment rates.

SUPPLEMENTARY INFORMATION: The IRF PPS Addenda along with other supporting documents and tables referenced in this proposed rule are available through the Internet on the CMS Web site at *http://www.cms.hhs.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientRehabFacPPS/*.

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period as soon as possible after they have been received at *http://www.regulations.gov*. Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

Executive Summary

A. Purpose

This proposed rule would update the prospective payment rates for IRFs for FY 2018 (that is, for discharges occurring on or after October 1, 2017, and on or before September 30, 2018) as required under section 1886(j)(3)(C) of the Social Security Act (the Act). As required by section 1886(j)(5) of the Act, this rule includes the classification and weighting factors for the IRF PPS's case-mix groups and a description of the methodologies and data used in computing the prospective payment rates for FY 2018. This proposed rule would also remove the 25 percent payment penalty for IRF–PAI late transmissions, remove the voluntary swallowing status item (Item 27) from the IRF–PAI, revise the ICD–10–CM diagnosis codes that are used to determine presumptive compliance under the 60 percent rule, provide for automatic annual updates to the presumptive methodology diagnosis

code lists, solicit comments regarding the criteria used to classify facilities for payment under the IRF PPS, use height/weight items from the IRF–PAI to determine patient BMI greater than 50 for cases of lower extremity single joint replacement under the presumptive methodology, and revise and update the quality measures and reporting requirements under the IRF QRP.

B. Summary of Major Provisions

In this proposed rule, we use the methods described in the FY 2017 IRF PPS final rule (81 FR 52056) to propose updates to the prospective payment rates for FY 2018 using updated FY 2016 IRF claims and the most recent available IRF cost report data, which is FY 2015 IRF cost report data. (Note: In the interest of brevity, the rates previously referred to as the ''Federal prospective payment rates'' are now referred to as the ''prospective payment rates''. No change in meaning is intended.) We are also proposing to revise and update quality measures and reporting requirements under the IRF QRP.

C. Summary of Impacts

Provision description	Transfers
FY 2018 IRF PPS payment rate update.	The overall economic impact of this proposed rule is an estimated $80 million in increased payments from the Federal government to IRFs during FY 2018.
	Costs
New quality reporting program requirements.	The total costs in FY 2018 for IRFs as a result of the new quality reporting requirements are estimated to be $3.4 million.

To assist readers in referencing sections contained in this document, we are providing the following Table of Contents.

Table of Contents

Acronyms, Abbreviations, and Short Forms

Because of the many terms to which we refer by acronym, abbreviation, or short form in this final rule, we are listing the acronyms, abbreviation, and short forms used and their corresponding terms in alphabetical order.

The Act The Social Security Act

The Affordable Care Act Patient Protection and Affordable Care Act (Pub. L. 111–148, enacted on March 23, 2010)

AHRQ Agency for Healthcare Research and Quality
ASAP Assessment Submission and Processing
ASCA The Administrative Simplification Compliance Act of 2002 (Pub. L. 107–105, enacted on December 27, 2002)
ASPE Office of the Assistant Secretary for Planning and Evaluation
BIMS Brief Interview for Mental Status
BiPAP Bilevel Positive Airway Pressure
BLS U.S. Bureau of Labor Statistics
BMI Body Mass Index
CAM Confusion Assessment Method
CARE Continuity Assessment Record and Evaluation
CAUTI Catheter-Associated Urinary Tract Infection
CBSA Core-Based Statistical Area
CCR Cost-to-Charge Ratio
CDI *Clostridium difficile* Infection
CMG Case-Mix Group
CMS Centers for Medicare & Medicaid Services
CPAP Continuous Positive Airway Pressure
CY Calendar year
DRA Deficit Reduction Act of 2005 (Pub. L. 109–171, enacted on February 8, 2006)
DSH Disproportionate Share Hospital
DTI Deep Tissue Injury
FFS Fee-for-Service
FISS Fiscal Intermediary Shared System
FR Federal Register
FY Federal Fiscal Year
GAO Government Accountability Office
GEMS General Equivalence Mapping
HHA Home Health Agency
HHS U.S. Department of Health & Human Services
HIPAA Health Insurance Portability and Accountability Act of 1996 (Pub. L. 104–191, enacted on August 21, 1996)
ICD–9–CM International Classification of Diseases, 9th Revision, Clinical Modification
ICD–10–CM International Classification of Diseases, 10th Revision, Clinical Modification
IGC Impairment Group Code
IGI IHS Global Insight
IMPACT Act Improving Medicare Post-Acute Care Transformation Act of 2014 (Pub. L. 113–185, enacted on October 6, 2014)
IPPS Inpatient prospective payment system
IRF Inpatient Rehabilitation Facility
IRF–PAI Inpatient Rehabilitation Facility-Patient Assessment Instrument
IRF PPS Inpatient Rehabilitation Facility Prospective Payment System
IRF QRP Inpatient Rehabilitation Facility Quality Reporting Program
IRVEN Inpatient Rehabilitation Validation and Entry
IV Intravenous
LIP Low-Income Percentage
LTCH Long-Term Care Hospital
MA Medicare Advantage (formerly known as Medicare Part C)
MAC Medicare Administrative Contractor
MACRA Medicare Access and CHIP Reauthorization Act of 2015 (Pub. L. 114–10, enacted on April 16, 2015)
MAP Measures Application Partnership
MedPAC Medicare Payment Advisory Commission
MFP Multifactor Productivity
MMSEA Medicare, Medicaid, and SCHIP Extension Act of 2007 (Pub. L. 110–173, enacted on December 29, 2007)
MRSA Methicillin-Resistant *Staphylococcus aureus*
MSPB Medicare Spending Per Beneficiary
NCHS National Center for Health Statistics
NHSN National Healthcare Safety Network
NPUAP National Pressure Ulcer Advisory Panel
NQF National Quality Forum
OMB Office of Management and Budget
ONC Office of the National Coordinator for Health Information Technology
OPPS/ASC Outpatient Prospective Payment System/Ambulatory Surgical Center
PAC Post-Acute Care
PAC/LTC Post-Acute Care/Long-Term Care
PAI Patient Assessment Instrument
PHQ Patient Health Questionnaire
PPR Potentially Preventable Readmissions
PPS Prospective Payment System
PRA Paperwork Reduction Act of 1995 (Pub. L. 104–13, enacted on May 22, 1995)
QIES Quality Improvement Evaluation System
QRP Quality Reporting Program
RIA Regulatory Impact Analysis
RIC Rehabilitation Impairment Category
RFA Regulatory Flexibility Act (Pub. L. 96–354, enacted on September 19, 1980)
RN Registered Nurse
RPL Rehabilitation, Psychiatric, and Long-Term Care
RTI Research Triangle Institute International
SME Subject Matter Experts
SNF Skilled Nursing Facility
SODF Special Open Door Forum
SSI Supplemental Security Income
TEP Technical Expert Panel
TPN Total Parenteral Nutrition

I. Background

A. Historical Overview of the IRF PPS

Section 1886(j) of the Act provides for the implementation of a per-discharge prospective payment system (PPS) for inpatient rehabilitation hospitals and inpatient rehabilitation units of a hospital (collectively, hereinafter referred to as IRFs). Payments under the IRF PPS encompass inpatient operating and capital costs of furnishing covered rehabilitation services (that is, routine, ancillary, and capital costs), but not direct graduate medical education costs, costs of approved nursing and allied health education activities, bad debts, and other services or items outside the scope of the IRF PPS. Although a complete discussion of the IRF PPS provisions appears in the original FY 2002 IRF PPS final rule (66 FR 41316) and the FY 2006 IRF PPS final rule (70 FR 47880), we are providing a general description of the IRF PPS for FYs 2002 through 2017.

Under the IRF PPS from FY 2002 through FY 2005, the prospective payment rates were computed across 100 distinct case-mix groups (CMGs), as described in the FY 2002 IRF PPS final rule (66 FR 41316). We constructed 95 CMGs using rehabilitation impairment categories (RICs), functional status (both motor and cognitive), and age (in some cases, cognitive status and age may not be a factor in defining a CMG). In addition, we constructed five special CMGs to account for very short stays and for patients who expire in the IRF.

For each of the CMGs, we developed relative weighting factors to account for a patient's clinical characteristics and expected resource needs. Thus, the weighting factors accounted for the relative difference in resource use across all CMGs. Within each CMG, we created tiers based on the estimated effects that certain comorbidities would have on resource use.

We established the federal PPS rates using a standardized payment conversion factor (formerly referred to as the budget-neutral conversion factor). For a detailed discussion of the budget-neutral conversion factor, please refer to our FY 2004 IRF PPS final rule (68 FR 45684 through 45685). In the FY 2006 IRF PPS final rule (70 FR 47880), we discussed in detail the methodology for determining the standard payment conversion factor.

We applied the relative weighting factors to the standard payment

conversion factor to compute the unadjusted prospective payment rates under the IRF PPS from FYs 2002 through 2005. Within the structure of the payment system, we then made adjustments to account for interrupted stays, transfers, short stays, and deaths. Finally, we applied the applicable adjustments to account for geographic variations in wages (wage index), the percentage of low-income patients, location in a rural area (if applicable), and outlier payments (if applicable) to the IRFs' unadjusted prospective payment rates.

For cost reporting periods that began on or after January 1, 2002, and before October 1, 2002, we determined the final prospective payment amounts using the transition methodology prescribed in section 1886(j)(1) of the Act. Under this provision, IRFs transitioning into the PPS were paid a blend of the federal IRF PPS rate and the payment that the IRFs would have received had the IRF PPS not been implemented. This provision also allowed IRFs to elect to bypass this blended payment and immediately be paid 100 percent of the federal IRF PPS rate. The transition methodology expired as of cost reporting periods beginning on or after October 1, 2002 (FY 2003), and payments for all IRFs now consist of 100 percent of the federal IRF PPS rate.

We established a CMS Web site as a primary information resource for the IRF PPS which is available at *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientRehabFacPPS/index.html*. The Web site may be accessed to download or view publications, software, data specifications, educational materials, and other information pertinent to the IRF PPS.

Section 1886(j) of the Act confers broad statutory authority upon the Secretary to propose refinements to the IRF PPS. In the FY 2006 IRF PPS final rule (70 FR 47880) and in correcting amendments to the FY 2006 IRF PPS final rule (70 FR 57166) that we published on September 30, 2005, we finalized a number of refinements to the IRF PPS case-mix classification system (the CMGs and the corresponding relative weights) and the case-level and facility-level adjustments. These refinements included the adoption of the Office of Management and Budget's (OMB) Core-Based Statistical Area (CBSA) market definitions, modifications to the CMGs, tier comorbidities, and CMG relative weights, implementation of a new teaching status adjustment for IRFs, revision and rebasing of the market basket index used to update IRF payments, and updates to the rural, low-income percentage (LIP), and high-cost outlier adjustments. Beginning with the FY 2006 IRF PPS final rule (70 FR 47908 through 47917), the market basket index used to update IRF payments was a market basket reflecting the operating and capital cost structures for freestanding IRFs, freestanding inpatient psychiatric facilities, and long-term care hospitals (LTCHs) (hereinafter referred to as the rehabilitation, psychiatric, and long-term care (RPL) market basket). Any reference to the FY 2006 IRF PPS final rule in this final rule also includes the provisions effective in the correcting amendments. For a detailed discussion of the final key policy changes for FY 2006, please refer to the FY 2006 IRF PPS final rule (70 FR 47880 and 70 FR 57166).

In the FY 2007 IRF PPS final rule (71 FR 48354), we further refined the IRF PPS case-mix classification system (the CMG relative weights) and the case-level adjustments, to ensure that IRF PPS payments would continue to reflect as accurately as possible the costs of care. For a detailed discussion of the FY 2007 policy revisions, please refer to the FY 2007 IRF PPS final rule (71 FR 48354).

In the FY 2008 IRF PPS final rule (72 FR 44284), we updated the prospective payment rates and the outlier threshold, revised the IRF wage index policy, and clarified how we determine high-cost outlier payments for transfer cases. For more information on the policy changes implemented for FY 2008, please refer to the FY 2008 IRF PPS final rule (72 FR 44284), in which we published the final FY 2008 IRF prospective payment rates.

After publication of the FY 2008 IRF PPS final rule (72 FR 44284), section 115 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (Pub. L. 110–173, enacted on December 29, 2007) (MMSEA), amended section 1886(j)(3)(C) of the Act to apply a zero percent increase factor for FYs 2008 and 2009, effective for IRF discharges occurring on or after April 1, 2008. Section 1886(j)(3)(C) of the Act required the Secretary to develop an increase factor to update the IRF prospective payment rates for each FY. Based on the legislative change to the increase factor, we revised the FY 2008 prospective payment rates for IRF discharges occurring on or after April 1, 2008. Thus, the final FY 2008 IRF prospective payment rates that were published in the FY 2008 IRF PPS final rule (72 FR 44284) were effective for discharges occurring on or after October 1, 2007, and on or before March 31, 2008; and the revised FY 2008 IRF prospective payment rates were effective for discharges occurring on or after April 1, 2008, and on or before September 30, 2008. The revised FY 2008 prospective payment rates are available on the CMS Web site at *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientRehabFacPPS/Data-Files.html*.

In the FY 2009 IRF PPS final rule (73 FR 46370), we updated the CMG relative weights, the average length of stay values, and the outlier threshold; clarified IRF wage index policies regarding the treatment of ''New England deemed'' counties and multi-campus hospitals; and revised the regulation text in response to section 115 of the MMSEA to set the IRF compliance percentage at 60 percent (the ''60 percent rule'') and continue the practice of including comorbidities in the calculation of compliance percentages. We also applied a zero percent market basket increase factor for FY 2009 in accordance with section 115 of the MMSEA. For more information on the policy changes implemented for FY 2009, please refer to the FY 2009 IRF PPS final rule (73 FR 46370), in which we published the final FY 2009 IRF prospective payment rates.

In the FY 2010 IRF PPS final rule (74 FR 39762) and in correcting amendments to the FY 2010 IRF PPS final rule (74 FR 50712) that we published on October 1, 2009, we updated the prospective payment rates, the CMG relative weights, the average length of stay values, the rural, LIP, teaching status adjustment factors, and the outlier threshold; implemented new IRF coverage requirements for determining whether an IRF claim is reasonable and necessary; and revised the regulation text to require IRFs to submit patient assessments on Medicare Advantage (MA) (formerly called Medicare Part C) patients for use in the 60 percent rule calculations. Any reference to the FY 2010 IRF PPS final rule in this final rule also includes the provisions effective in the correcting amendments. For more information on the policy changes implemented for FY 2010, please refer to the FY 2010 IRF PPS final rule (74 FR 39762 and 74 FR 50712), in which we published the final FY 2010 IRF prospective payment rates.

After publication of the FY 2010 IRF PPS final rule (74 FR 39762), section 3401(d) of the Patient Protection and Affordable Care Act (Pub. L. 111–148, enacted on March 23, 2010), as amended by section 10319 of the same Act and by section 1105 of the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152, enacted on March 30, 2010) (collectively,

hereinafter referred to as ''The Affordable Care Act''), amended section 1886(j)(3)(C) of the Act and added section 1886(j)(3)(D) of the Act. Section 1886(j)(3)(C) of the Act requires the Secretary to estimate a multifactor productivity (MFP) adjustment to the market basket increase factor, and to apply other adjustments as defined by the Act. The productivity adjustment applies to FYs from 2012 forward. The other adjustments apply to FYs 2010 to 2019.

Sections 1886(j)(3)(C)(ii)(II) and 1886(j)(3)(D)(i) of the Act defined the adjustments that were to be applied to the market basket increase factors in FYs 2010 and 2011. Under these provisions, the Secretary was required to reduce the market basket increase factor in FY 2010 by a 0.25 percentage point adjustment. Notwithstanding this provision, in accordance with section 3401(p) of the Affordable Care Act, the adjusted FY 2010 rate was only to be applied to discharges occurring on or after April 1, 2010. Based on the self-implementing legislative changes to section 1886(j)(3) of the Act, we adjusted the FY 2010 federal prospective payment rates as required, and applied these rates to IRF discharges occurring on or after April 1, 2010, and on or before September 30, 2010. Thus, the final FY 2010 IRF prospective payment rates that were published in the FY 2010 IRF PPS final rule (74 FR 39762) were used for discharges occurring on or after October 1, 2009, and on or before March 31, 2010, and the adjusted FY 2010 IRF prospective payment rates applied to discharges occurring on or after April 1, 2010, and on or before September 30, 2010. The adjusted FY 2010 prospective payment rates are available on the CMS Web site at *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientRehabFacPPS/Data-Files.html*.

In addition, sections 1886(j)(3)(C) and (D) of the Act also affected the FY 2010 IRF outlier threshold amount because they required an adjustment to the FY 2010 RPL market basket increase factor, which changed the standard payment conversion factor for FY 2010. Specifically, the original FY 2010 IRF outlier threshold amount was determined based on the original estimated FY 2010 RPL market basket increase factor of 2.5 percent and the standard payment conversion factor of $13,661. However, as adjusted, the IRF prospective payments are based on the adjusted RPL market basket increase factor of 2.25 percent and the revised standard payment conversion factor of $13,627. To maintain estimated outlier payments for FY 2010 equal to the established standard of 3 percent of total estimated IRF PPS payments for FY 2010, we revised the IRF outlier threshold amount for FY 2010 for discharges occurring on or after April 1, 2010, and on or before September 30, 2010. The revised IRF outlier threshold amount for FY 2010 was $10,721.

Sections 1886(j)(3)(C)(ii)(II) and 1886(j)(3)(D)(i) of the Act also required the Secretary to reduce the market basket increase factor in FY 2011 by a 0.25 percentage point adjustment. The FY 2011 IRF PPS notice (75 FR 42836) and the correcting amendments to the FY 2011 IRF PPS notice (75 FR 70013) described the required adjustments to the FY 2011 and FY 2010 IRF PPS prospective payment rates and outlier threshold amount for IRF discharges occurring on or after April 1, 2010, and on or before September 30, 2011. It also updated the FY 2011 prospective payment rates, the CMG relative weights, and the average length of stay values. Any reference to the FY 2011 IRF PPS notice in this final rule also includes the provisions effective in the correcting amendments. For more information on the FY 2010 and FY 2011 adjustments or the updates for FY 2011, please refer to the FY 2011 IRF PPS notice (75 FR 42836 and 75 FR 70013).

In the FY 2012 IRF PPS final rule (76 FR 47836), we updated the IRF prospective payment rates, rebased and revised the RPL market basket, and established a new QRP for IRFs in accordance with section 1886(j)(7) of the Act. We also revised regulation text for the purpose of updating and providing greater clarity. For more information on the policy changes implemented for FY 2012, please refer to the FY 2012 IRF PPS final rule (76 FR 47836), in which we published the final FY 2012 IRF prospective payment rates.

The FY 2013 IRF PPS notice (77 FR 44618) described the required adjustments to the FY 2013 prospective payment rates and outlier threshold amount for IRF discharges occurring on or after October 1, 2012, and on or before September 30, 2013. It also updated the FY 2013 prospective payment rates, the CMG relative weights, and the average length of stay values. For more information on the updates for FY 2013, please refer to the FY 2013 IRF PPS notice (77 FR 44618).

In the FY 2014 IRF PPS final rule (78 FR 47860), we updated the prospective payment rates, the CMG relative weights, and the outlier threshold amount. We also updated the facility-level adjustment factors using an enhanced estimation methodology, revised the list of diagnosis codes that count toward an IRF's 60 percent rule compliance calculation to determine ''presumptive compliance,'' revised sections of the IRF–PAI, revised requirements for acute care hospitals that have IRF units, clarified the IRF regulation text regarding limitation of review, updated references to previously changed sections in the regulations text, and revised and updated quality measures and reporting requirements under the IRF QRP. For more information on the policy changes implemented for FY 2014, please refer to the FY 2014 IRF PPS final rule (78 FR 47860), in which we published the final FY 2014 IRF prospective payment rates.

In the FY 2015 IRF PPS final rule (79 FR 45872), we updated the prospective payment rates, the CMG relative weights, and the outlier threshold amount. We also further revised the list of diagnosis codes that count toward an IRF's 60 percent rule compliance calculation to determine ''presumptive compliance,'' revised sections of the IRF–PAI, and revised and updated quality measures and reporting requirements under the IRF QRP. For more information on the policy changes implemented for FY 2015, please refer to the FY 2015 IRF PPS final rule (79 FR 45872) and the FY 2015 IRF PPS correction notice (79 FR 59121).

In the FY 2016 IRF PPS final rule (80 FR 47036), we updated the prospective payment rates, the CMG relative weights, and the outlier threshold amount. We also adopted an IRF-specific market basket that reflects the cost structures of only IRF providers, a blended one-year transition wage index based on the adoption of new OMB area delineations, a 3-year phase-out of the rural adjustment for certain IRFs due to the new OMB area delineations, and revisions and updates to the IRF QRP. For more information on the policy changes implemented for FY 2016, please refer to the FY 2016 IRF PPS final rule (80 FR 47036).

In the FY 2017 IRF PPS final rule (81 FR 52056), we updated the prospective payment rates, the CMG relative weights, and the outlier threshold amount. We also revised and updated quality measures and reporting requirements under the IRF QRP. For more information on the policy changes implemented for FY 2017, please refer to the FY 2017 IRF PPS final rule (81 FR 52056) and the FY 2017 IRF PPS correction notice (81 FR 59901).

B. Provisions of the Affordable Care Act Affecting the IRF PPS in FY 2012 and Beyond

The Affordable Care Act included several provisions that affect the IRF PPS in FYs 2012 and beyond. In addition to what was previously discussed, section 3401(d) of the Affordable Care Act also added section 1886(j)(3)(C)(ii)(I) (providing for a ''productivity adjustment'' for fiscal year 2012 and each subsequent fiscal year). The productivity adjustment for FY 2018 is discussed in section V.B. of this proposed rule. Section 3401(d) of the Affordable Care Act requires an additional 0.75 percentage point adjustment to the IRF increase factor for each of FYs 2017, 2018, and 2019. The applicable adjustment for FY 2018 is discussed in section V.B. of this proposed rule. Section 1886(j)(3)(C)(ii)(II) of the Act notes that the application of these adjustments to the market basket update may result in an update that is less than 0.0 for a fiscal year and in payment rates for a fiscal year being less than such payment rates for the preceding fiscal year.

Section 3004(b) of the Affordable Care Act also addressed the IRF PPS. It reassigned the previously designated section 1886(j)(7) of the Act to section 1886(j)(8) and inserted a new section 1886(j)(7), which contains requirements for the Secretary to establish a QRP for IRFs. Under that program, data must be submitted in a form and manner and at a time specified by the Secretary. Beginning in FY 2014, section 1886(j)(7)(A)(i) of the Act requires the application of a 2 percentage point reduction of the applicable market basket increase factor for IRFs that fail to comply with the quality data submission requirements. Application of the 2 percentage point reduction may result in an update that is less than 0.0 for a fiscal year and in payment rates for a fiscal year being less than such payment rates for the preceding fiscal year. Reporting-based reductions to the market basket increase factor will not be cumulative; they will only apply for the FY involved.

Under section 1886(j)(7)(D)(i) and (ii) of the Act, the Secretary is generally required to select quality measures for the IRF QRP from those that have been endorsed by the consensus-based entity which holds a performance measurement contract under section 1890(a) of the Act. This contract is currently held by the National Quality Forum (NQF). So long as due consideration is given to measures that have been endorsed or adopted by a consensus-based organization, section 1886(j)(7)(D)(ii) of the Act authorizes the Secretary to select non-endorsed measures for specified areas or medical topics when there are no feasible or practical endorsed measure(s).

Section 1886(j)(7)(E) of the Act requires the Secretary to establish procedures for making the IRF PPS quality reporting data available to the public. In so doing, the Secretary must ensure that IRFs have the opportunity to review any such data prior to its release to the public.

C. Operational Overview of the Current IRF PPS

As described in the FY 2002 IRF PPS final rule, upon the admission and discharge of a Medicare Part A Fee-for-Service (FFS) patient, the IRF is required to complete the appropriate sections of a patient assessment instrument (PAI), designated as the IRF–PAI. In addition, beginning with IRF discharges occurring on or after October 1, 2009, the IRF is also required to complete the appropriate sections of the IRF–PAI upon the admission and discharge of each MA patient, as described in the FY 2010 IRF PPS final rule. All required data must be electronically encoded into the IRF–PAI software product. Generally, the software product includes patient classification programming called the Grouper software. The Grouper software uses specific IRF–PAI data elements to classify (or group) patients into distinct CMGs and account for the existence of any relevant comorbidities.

The Grouper software produces a 5-character CMG number. The first character is an alphabetic character that indicates the comorbidity tier. The last 4 characters are numeric characters that represent the distinct CMG number. Free downloads of the Inpatient Rehabilitation Validation and Entry (IRVEN) software product, including the Grouper software, are available on the CMS Web site at *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientRehabFacPPS/Software.html.*

Once a Medicare FFS Part A patient is discharged, the IRF submits a Medicare claim as a Health Insurance Portability and Accountability Act of 1996 (Pub. L. 104–191, enacted on August 21, 1996) (HIPAA) compliant electronic claim or, if the Administrative Simplification Compliance Act of 2002 (Pub. L. 107–105, enacted on December 27, 2002) (ASCA) permits, a paper claim (a UB–04 or a CMS–1450 as appropriate) using the five-character CMG number and sends it to the appropriate Medicare Administrative Contractor (MAC). In addition, once a MA patient is discharged, in accordance with the Medicare Claims Processing Manual, chapter 3, section 20.3 (Pub. 100–04), hospitals (including IRFs) must submit an informational-only bill (Type of Bill (TOB) 111), which includes Condition Code 04 to their MAC. This will ensure that the MA days are included in the hospital's Supplemental Security Income (SSI) ratio (used in calculating the IRF LIP adjustment) for fiscal year 2007 and beyond. Claims submitted to Medicare must comply with both ASCA and HIPAA.

Section 3 of the ASCA amends section 1862(a) of the Act by adding paragraph (22), which requires the Medicare program, subject to section 1862(h) of the Act, to deny payment under Part A or Part B for any expenses for items or services for which a claim is submitted other than in an electronic form specified by the Secretary. Section 1862(h) of the Act, in turn, provides that the Secretary shall waive such denial in situations in which there is no method available for the submission of claims in an electronic form or the entity submitting the claim is a small provider. In addition, the Secretary also has the authority to waive such denial in such unusual cases as the Secretary finds appropriate. For more information, see the ''Medicare Program; Electronic Submission of Medicare Claims'' final rule (70 FR 71008). Our instructions for the limited number of Medicare claims submitted on paper are available at *http://www.cms.gov/manuals/downloads/clm104c25.pdf.*

Section 3 of the ASCA operates in the context of the administrative simplification provisions of HIPAA, which include, among others, the requirements for transaction standards and code sets codified in 45 CFR, parts 160 and 162, subparts A and I through R (generally known as the Transactions Rule). The Transactions Rule requires covered entities, including covered health care providers, to conduct covered electronic transactions according to the applicable transaction standards. (See the CMS program claim memoranda at *http://www.cms.gov/ElectronicBillingEDITrans/* and listed in the addenda to the Medicare Intermediary Manual, Part 3, section 3600).

The MAC processes the claim through its software system. This software system includes pricing programming called the ''Pricer'' software. The Pricer software uses the CMG number, along with other specific claim data elements and provider-specific data, to adjust the IRF's prospective payment for interrupted stays, transfers, short stays,

and deaths, and then applies the applicable adjustments to account for the IRF's wage index, percentage of low-income patients, rural location, and outlier payments. For discharges occurring on or after October 1, 2005, the IRF PPS payment also reflects the teaching status adjustment that became effective as of FY 2006, as discussed in the FY 2006 IRF PPS final rule (70 FR 47880).

D. Advancing Health Information Exchange

The Department of Health & Human Services (HHS) has a number of initiatives designed to encourage and support the adoption of health information technology and to promote nationwide health information exchange to improve health care. As discussed in the August 2013 Statement ''Principles and Strategies for Accelerating Health Information Exchange'' (available at *http://www.healthit.gov/sites/default/files/acceleratinghieprinciples_strategy.pdf*), we believe that all individuals, their families, their healthcare and social service providers, and payers should have consistent and timely access to health information in a standardized format that can be securely exchanged between the patient, providers, and others involved in the individual's care. Health information technology (health IT) that facilitates the secure, efficient, and effective sharing and use of health-related information when and where it is needed is an important tool for settings across the continuum of care, including inpatient rehabilitation facilities. The effective adoption and use of health information exchange and health IT tools will be essential as IRFs seek to improve quality and lower costs through value-based care.

The Office of the National Coordinator for Health Information Technology (ONC) has released a document entitled ''Connecting Health and Care for the Nation: A Shared Nationwide Interoperability Roadmap'' (Roadmap) (available at *https://www.healthit.gov/sites/default/files/hie-interoperability/nationwide-interoperability-roadmap-final-version-1.0.pdf*). In the near term, the Roadmap focuses on actions that will enable individuals and providers across the care continuum to send, receive, find, and use a common set of electronic clinical information at the nationwide level by the end of 2017. The Roadmap's goals also align with the Improving Medicare Post-Acute Care Transformation Act of 2014 (Pub. L. 113–185, enacted on October 6, 2014) (IMPACT Act), which requires assessment data to be standardized and interoperable to allow for exchange of the data.

The Roadmap identifies four critical pathways that health IT stakeholders should focus on now to create a foundation for long-term success: (1) Improve technical standards and implementation guidance for priority data domains and associated elements; (2) rapidly shift and align federal, state, and commercial payment policies from FFS to value-based models to stimulate the demand for interoperability; (3) clarify and align federal and state privacy and security requirements that enable interoperability; and (4) align and promote the use of consistent policies and business practices that support interoperability, in coordination with stakeholders. In addition, ONC has released the final version of the 2017 Interoperability Standards Advisory (available at *https://www.healthit.gov/standards-advisory*), a coordinated catalog of standards and implementation specifications to enable priority health information exchange functions. Providers, payers, and vendors are encouraged to take these health IT standards into account as they implement interoperable health information exchange across the continuum of care, including care settings such as inpatient rehabilitation facilities.

We encourage stakeholders to utilize health information exchange and certified health IT to effectively and efficiently help providers improve internal care delivery practices, engage patients in their care, support management of care across the continuum, enable the reporting of electronically specified clinical quality measures, and improve efficiencies and reduce unnecessary costs. As adoption of certified health IT increases and interoperability standards continue to mature, HHS will seek to reinforce standards through relevant policies and programs.

II. Summary of Provisions of the Proposed Rule

In this rule, we propose to update the IRF prospective payment rates for FY 2018, remove the 25 percent penalty for IRF–PAI late transmissions, remove the voluntary swallowing status item (Item 27) from the IRF–PAI, revise the lists of ICD–10–CM diagnosis codes that are used to determine presumptive compliance under the 60 percent rule, provide for automatic annual updates to presumptive methodology diagnosis code lists, solicit comments regarding the criteria used to classify facilities for payment under the IRF PPS, use height/weight items from the IRF–PAI to determine patient BMI greater than 50 for cases of lower extremity single-joint replacement under the presumptive methodology, and revise and update quality measures and reporting requirements under the IRF QRP.

The proposed updates to the IRF prospective payment rates for FY 2018 are as follows:

- Update the FY 2018 IRF PPS relative weights and average length of stay values using the most current and complete Medicare claims and cost report data in a budget-neutral manner, as discussed in section III. of this proposed rule.
- Describe the continued use of FY 2014 facility-level adjustment factors as discussed in section IV. of this proposed rule.
- Update the FY 2018 IRF PPS payment rates by the proposed market basket increase factor, as required by sections 1886(j)(3)(C)(iii) of the Act, as described in section V. of this proposed rule.
- Update the FY 2018 IRF PPS payment rates by the FY 2018 wage index and the labor-related share in a budget-neutral manner, as discussed in section V. of this proposed rule.
- Describe the calculation of the IRF standard payment conversion factor for FY 2018, as discussed in section V. of this proposed rule.
- Update the outlier threshold amount for FY 2018, as discussed in section VI. of this proposed rule.
- Update the cost-to-charge ratio (CCR) ceiling and urban/rural average CCRs for FY 2018, as discussed in section VI. of this proposed rule.
- Describe the proposed removal of the 25 percent payment penalty for IRF–PAI late transmissions in section VII. of this proposed rule.
- Describe proposed revisions to the IRF–PAI to remove the voluntary swallowing status item in section VIII. of this proposed rule.
- Describe proposed refinements to the presumptive compliance methodology ICD–10–CM diagnosis codes in section IX. of this proposed rule.
- Solicit comments regarding the criteria used to classify facilities for payment under the IRF PPS in section IX. of this proposed rule.
- Describe proposed automatic annual updates to the presumptive methodology diagnosis code lists in section X. of this proposed rule.
- Describe the proposed use of height/weight items on the IRF–PAI to determine patient BMI greater than 50 for cases of lower extremity single joint replacement under the presumptive

methodology in section XI. of this proposed rule.

- Describe proposed revisions and updates to quality measures and reporting requirements under the QRP for IRFs in accordance with sections 1886(j)(7) and 1899B of the Act, as discussed in section XII. of this proposed rule.

III. Proposed Update to the Case-Mix Group (CMG) Relative Weights and Average Length of Stay Values for FY 2018

As specified in § 412.620(b)(1), we calculate a relative weight for each CMG that is proportional to the resources needed by an average inpatient rehabilitation case in that CMG. For example, cases in a CMG with a relative weight of 2, on average, will cost twice as much as cases in a CMG with a relative weight of 1. Relative weights account for the variance in cost per discharge due to the variance in resource utilization among the payment groups, and their use helps to ensure that IRF PPS payments support beneficiary access to care, as well as provider efficiency.

In this proposed rule, we propose to update the CMG relative weights and average length of stay values for FY 2018. As required by statute, we always use the most recent available data to update the CMG relative weights and average lengths of stay. For FY 2018, we propose to use the FY 2016 IRF claims and FY 2015 IRF cost report data. These data are the most current and complete data available at this time. Currently, only a small portion of the FY 2016 IRF cost report data are available for analysis, but the majority of the FY 2016 IRF claims data are available for analysis.

In this rule, we propose to apply these data using the same methodologies that we have used to update the CMG relative weights and average length of stay values each fiscal year since we implemented an update to the methodology to use the more detailed CCR data from the cost reports of IRF subprovider units of primary acute care hospitals, instead of CCR data from the associated primary care hospitals, to calculate IRFs' average costs per case, as discussed in the FY 2009 IRF PPS final rule (73 FR 46372). In calculating the CMG relative weights, we use a hospital-specific relative value method to estimate operating (routine and ancillary services) and capital costs of IRFs. The process used to calculate the CMG relative weights for this final rule is as follows:

Step 1. We estimate the effects that comorbidities have on costs.

Step 2. We adjust the cost of each Medicare discharge (case) to reflect the effects found in the first step.

Step 3. We use the adjusted costs from the second step to calculate CMG relative weights, using the hospital-specific relative value method.

Step 4. We normalize the FY 2018 CMG relative weights to the same average CMG relative weight from the CMG relative weights implemented in the FY 2017 IRF PPS final rule (81 FR 52056).

Consistent with the methodology that we have used to update the IRF classification system in each instance in the past, we propose to update the CMG relative weights for FY 2018 in such a way that total estimated aggregate payments to IRFs for FY 2018 are the same with or without the changes (that is, in a budget-neutral manner) by applying a budget neutrality factor to the standard payment amount. To calculate the appropriate budget neutrality factor for use in updating the FY 2018 CMG relative weights, we use the following steps:

Step 1. Calculate the estimated total amount of IRF PPS payments for FY 2018 (with no changes to the CMG relative weights).

Step 2. Calculate the estimated total amount of IRF PPS payments for FY 2018 by applying the proposed changes to the CMG relative weights (as discussed in this proposed rule).

Step 3. Divide the amount calculated in step 1 by the amount calculated in step 2 to determine the budget neutrality factor (0.9974) that would maintain the same total estimated aggregate payments in FY 2018 with and without the proposed changes to the CMG relative weights.

Step 4. Apply the budget neutrality factor (0.9974) to the FY 2017 IRF PPS standard payment amount after the application of the budget-neutral wage adjustment factor.

In section V. E. of this proposed rule, we discuss the proposed use of the existing methodology to calculate the proposed standard payment conversion factor for FY 2018.

In Table 1, ''Proposed Relative Weights and Average Length of Stay Values for Case-Mix Groups,'' we present the proposed CMGs, the comorbidity tiers, the corresponding relative weights, and the average length of stay values for each CMG and tier for FY 2018. The average length of stay for each CMG is used to determine when an IRF discharge meets the definition of a short-stay transfer, which results in a per diem case level adjustment.

TABLE 1—PROPOSED RELATIVE WEIGHTS AND AVERAGE LENGTH OF STAY VALUES FOR CASE-MIX GROUPS

CMG	CMG Description (M = motor, C = cognitive, A = age)	Relative weight				Average length of stay			
		Tier 1	Tier 2	Tier 3	No comorbidities tier	Tier 1	Tier 2	Tier 3	No comorbidities tier
0101	Stroke, M>51.05	0.8483	0.7280	0.6724	0.6423	9	9	9	8
0102	Stroke, M>44.45 and M<51.05 and C>18.5	1.0670	0.9157	0.8458	0.8079	11	12	10	10
0103	Stroke, M>44.45 and M<51.05 and C<18.5	1.2069	1.0357	0.9567	0.9138	13	13	12	11
0104	Stroke, M>38.85 and M<44.45	1.2945	1.1109	1.0261	0.9802	13	13	12	12
0105	Stroke, M>34.25 and M<38.85	1.5055	1.2920	1.1934	1.1399	14	14	14	13
0106	Stroke, M>30.05 and M<34.25	1.6678	1.4313	1.3220	1.2628	16	16	15	15
0107	Stroke, M>26.15 and M<30.05	1.8621	1.5980	1.4760	1.4099	17	17	16	16
0108	Stroke, M<26.15 and A>84.5	2.3684	2.0324	1.8773	1.7932	21	23	21	20
0109	Stroke, M>22.35 and M<26.15 and A<84.5	2.1330	1.8304	1.6907	1.6150	19	19	19	19
0110	Stroke, M<22.35 and A<84.5	2.7845	2.3896	2.2072	2.1083	27	26	23	24
0201	Traumatic brain injury, M>53.35 and C>23.5	0.8414	0.6780	0.6173	0.5671	9	9	8	7
0202	Traumatic brain injury, M>44.25 and M<53.35 and C>23.5.	1.0873	0.8762	0.7977	0.7329	11	11	10	9
0203	Traumatic brain injury, M>44.25 and C<23.5	1.2583	1.0140	0.9231	0.8481	12	12	11	11
0204	Traumatic brain injury, M>40.65 and M<44.25	1.3877	1.1182	1.0180	0.9353	11	12	12	12
0205	Traumatic brain injury, M>28.75 and M<40.65	1.6314	1.3146	1.1968	1.0996	15	15	14	13
0206	Traumatic brain injury, M>22.05 and M<28.75	1.9703	1.5877	1.4454	1.3280	18	18	16	15
0207	Traumatic brain injury, M<22.05	2.5103	2.0229	1.8416	1.6920	28	23	19	18
0301	Non-traumatic brain injury, M>41.05	1.1649	0.9439	0.8581	0.8107	10	11	10	10

TABLE 1—PROPOSED RELATIVE WEIGHTS AND AVERAGE LENGTH OF STAY VALUES FOR CASE-MIX GROUPS—Continued

CMG	CMG Description (M = motor, C = cognitive, A = age)	Relative weight				Average length of stay			
		Tier 1	Tier 2	Tier 3	No comorbidities tier	Tier 1	Tier 2	Tier 3	No comorbidities tier
0302	Non-traumatic brain injury, M>35.05 and M<41.05.	1.4142	1.1460	1.0418	0.9842	13	13	12	12
0303	Non-traumatic brain injury, M>26.15 and M<35.05.	1.6626	1.3472	1.2248	1.1571	15	15	13	13
0304	Non-traumatic brain injury, M<26.15	2.1547	1.7459	1.5872	1.4995	21	19	17	16
0401	Traumatic spinal cord injury, M>48.45	0.8971	0.8369	0.7456	0.6728	11	11	10	9
0402	Traumatic spinal cord injury, M>30.35 and M<48.45.	1.3102	1.2223	1.0888	0.9825	13	14	13	12
0403	Traumatic spinal cord injury, M>16.05 and M<30.35.	2.1239	1.9813	1.7650	1.5927	22	22	20	18
0404	Traumatic spinal cord injury, M<16.05 and A>63.5.	3.7200	3.4704	3.0915	2.7897	42	36	31	33
0405	Traumatic spinal cord injury, M<16.05 and A<63.5.	3.4257	3.1958	2.8469	2.5690	33	35	31	27
0501	Non-traumatic spinal cord injury, M>51.35	0.9396	0.7059	0.6687	0.6136	9	9	9	7
0502	Non-traumatic spinal cord injury, M>40.15 and M<51.35.	1.2215	0.9178	0.8693	0.7978	12	11	10	10
0503	Non-traumatic spinal cord injury, M>31.25 and M<40.15.	1.5300	1.1496	1.0889	0.9992	16	13	12	12
0504	Non-traumatic spinal cord injury, M>29.25 and M<31.25.	1.7373	1.3053	1.2364	1.1346	17	15	14	13
0505	Non-traumatic spinal cord injury, M>23.75 and M<29.25.	1.9970	1.5004	1.4212	1.3042	18	17	16	15
0506	Non-traumatic spinal cord injury, M<23.75	2.7578	2.0721	1.9627	1.8011	26	23	21	20
0601	Neurological, M>47.75	1.0678	0.8160	0.7570	0.6888	10	9	9	8
0602	Neurological, M>37.35 and M<47.75	1.3930	1.0646	0.9876	0.8986	12	12	11	11
0603	Neurological, M>25.85 and M<37.35	1.7085	1.3056	1.2112	1.1021	14	14	13	13
0604	Neurological, M<25.85	2.2217	1.6978	1.5750	1.4331	19	18	16	16
0701	Fracture of lower extremity, M>42.15	1.0395	0.8307	0.7888	0.7185	12	11	10	9
0702	Fracture of lower extremity, M>34.15 and M<42.15.	1.3168	1.0523	0.9993	0.9102	12	12	11	11
0703	Fracture of lower extremity, M>28.15 and M<34.15.	1.5920	1.2722	1.2082	1.1004	15	14	14	13
0704	Fracture of lower extremity, M<28.15	2.0178	1.6125	1.5313	1.3947	18	18	17	16
0801	Replacement of lower extremity joint, M>49.55	0.8775	0.6453	0.6128	0.5656	8	8	7	7
0802	Replacement of lower extremity joint, M>37.05 and M<49.55.	1.1266	0.8285	0.7868	0.7262	11	10	9	9
0803	Replacement of lower extremity joint, M>28.65 and M<37.05 and A>83.5.	1.4578	1.0721	1.0181	0.9396	13	13	12	11
0804	Replacement of lower extremity joint, M>28.65 and M<37.05 and A<83.5.	1.3414	0.9865	0.9368	0.8646	12	11	11	10
0805	Replacement of lower extremity joint, M>22.05 and M<28.65.	1.5913	1.1703	1.1114	1.0257	14	13	12	12
0806	Replacement of lower extremity joint, M<22.05	1.9238	1.4148	1.3436	1.2400	16	16	14	14
0901	Other orthopedic, M>44.75	1.0100	0.8084	0.7245	0.6736	10	10	9	8
0902	Other orthopedic, M>34.35 and M<44.75	1.3277	1.0627	0.9524	0.8856	12	12	11	10
0903	Other orthopedic, M>24.15 and M<34.35	1.6291	1.3040	1.1686	1.0866	15	14	13	13
0904	Other orthopedic, M<24.15	2.0410	1.6337	1.4641	1.3613	18	18	16	15
1001	Amputation, lower extremity, M>47.65	1.0450	0.9001	0.7939	0.7247	10	11	10	9
1002	Amputation, lower extremity, M>36.25 and M<47.65.	1.3755	1.1847	1.0450	0.9538	13	13	12	11
1003	Amputation, lower extremity, M<36.25	2.0095	1.7308	1.5266	1.3935	18	18	17	16
1101	Amputation, non-lower extremity, M>36.35	1.3101	1.1733	1.0154	0.8784	12	15	12	10
1102	Amputation, non-lower extremity, M<36.35	1.8980	1.6999	1.4711	1.2727	16	23	15	14
1201	Osteoarthritis, M>37.65	1.2205	0.9178	0.8571	0.7889	9	11	10	10
1202	Osteoarthritis, M>30.75 and M<37.65	1.5786	1.1871	1.1086	1.0203	11	13	13	12
1203	Osteoarthritis, M<30.75	1.9315	1.4525	1.3564	1.2485	12	15	15	14
1301	Rheumatoid, other arthritis, M>36.35	1.2280	0.9277	0.8333	0.7974	10	10	10	9
1302	Rheumatoid, other arthritis, M>26.15 and M<36.35.	1.6884	1.2755	1.1457	1.0964	16	14	12	12
1303	Rheumatoid, other arthritis, M<26.15	2.1985	1.6609	1.4919	1.4276	18	18	16	16
1401	Cardiac, M>48.85	0.9282	0.7469	0.6826	0.6196	10	8	8	8
1402	Cardiac, M>38.55 and M<48.85	1.2233	0.9844	0.8997	0.8165	12	11	10	10
1403	Cardiac, M>31.15 and M<38.55	1.4648	1.1787	1.0773	0.9777	13	13	12	11
1404	Cardiac, M<31.15	1.8551	1.4927	1.3643	1.2382	17	16	14	14
1501	Pulmonary, M>49.25	1.0146	0.8485	0.7738	0.7413	10	9	9	8
1502	Pulmonary, M>39.05 and M<49.25	1.3154	1.1001	1.0032	0.9612	11	12	11	10
1503	Pulmonary, M>29.15 and M<39.05	1.5983	1.3367	1.2190	1.1679	14	14	12	12
1504	Pulmonary, M<29.15	1.9815	1.6572	1.5112	1.4478	20	16	15	14
1601	Pain syndrome, M>37.15	1.1541	0.9076	0.8273	0.7600	10	11	10	9
1602	Pain syndrome, M>26.75 and M<37.15	1.5368	1.2085	1.1016	1.0120	12	14	13	12
1603	Pain syndrome, M<26.75	1.9181	1.5084	1.3749	1.2631	14	16	15	14
1701	Major multiple trauma without brain or spinal cord injury, M>39.25.	1.1984	0.9331	0.8430	0.7737	10	11	10	9
1702	Major multiple trauma without brain or spinal cord injury, M>31.05 and M<39.25.	1.5242	1.1867	1.0722	0.9840	14	14	12	12
1703	Major multiple trauma without brain or spinal cord injury, M>25.55 and M<31.05.	1.8018	1.4029	1.2675	1.1633	17	15	14	14

TABLE 1—PROPOSED RELATIVE WEIGHTS AND AVERAGE LENGTH OF STAY VALUES FOR CASE-MIX GROUPS—Continued

CMG	CMG Description (M = motor, C = cognitive, A = age)	Relative weight				Average length of stay			
		Tier 1	Tier 2	Tier 3	No comorbidities tier	Tier 1	Tier 2	Tier 3	No comorbidities tier
1704	Major multiple trauma without brain or spinal cord injury, M<25.55.	2.2806	1.7756	1.6043	1.4724	21	19	17	17
1801	Major multiple trauma with brain or spinal cord injury, M>40.85.	1.3059	1.0064	0.8850	0.8157	13	11	10	10
1802	Major multiple trauma with brain or spinal cord injury, M>23.05 and M<40.85.	1.8718	1.4425	1.2685	1.1692	17	16	14	14
1803	Major multiple trauma with brain or spinal cord injury, M<23.05.	2.9245	2.2538	1.9819	1.8267	32	26	21	20
1901	Guillian Barre, M>35.95	1.2961	1.0778	0.9935	0.9522	13	12	12	11
1902	Guillian Barre, M>18.05 and M<35.95	2.2324	1.8563	1.7112	1.6400	23	20	21	18
1903	Guillian Barre, M<18.05	3.6781	3.0585	2.8194	2.7020	39	32	28	30
2001	Miscellaneous, M>49.15	0.9421	0.7634	0.6971	0.6329	9	9	8	8
2002	Miscellaneous, M>38.75 and M<49.15	1.2399	1.0047	0.9174	0.8330	11	11	10	10
2003	Miscellaneous, M>27.85 and M<38.75	1.5409	1.2486	1.1401	1.0351	14	14	12	12
2004	Miscellaneous, M<27.85	1.9681	1.5948	1.4562	1.3222	18	17	15	15
2101	Burns, M>0	1.8414	1.8221	1.3846	1.2977	29	17	14	14
5001	Short-stay cases, length of stay is 3 days or fewer.	.....	.....	.....	0.1567	.....	.....	.....	2
5101	Expired, orthopedic, length of stay is 13 days or fewer.	.....	.....	.....	0.6583	.....	.....	.....	7
5102	Expired, orthopedic, length of stay is 14 days or more.	.....	.....	.....	1.6390	.....	.....	.....	18
5103	Expired, not orthopedic, length of stay is 15 days or fewer.	.....	.....	.....	0.8111	.....	.....	.....	8
5104	Expired, not orthopedic, length of stay is 16 days or more.	.....	.....	.....	2.0333	.....	.....	.....	21

Generally, updates to the CMG relative weights result in some increases and some decreases to the CMG relative weight values. Table 2 shows how we estimate that the application of the proposed revisions for FY 2018 would affect particular CMG relative weight values, which would affect the overall distribution of payments within CMGs and tiers. Note that, because we propose to implement the CMG relative weight revisions in a budget-neutral manner (as previously described), total estimated aggregate payments to IRFs for FY 2018 would not be affected as a result of the proposed CMG relative weight revisions. However, the proposed revisions would affect the distribution of payments within CMGs and tiers.

TABLE 2—DISTRIBUTIONAL EFFECTS OF THE PROPOSED CHANGES TO THE CMG RELATIVE WEIGHTS

[FY 2017 Values Compared with FY 2018 values]

Percentage change in CMG relative weights	Number of cases affected	Percentage of cases affected
Increased by 15% or more	51	0.0
Increased by between 5% and 15%	1,720	0.4
Changed by less than 5%	394,048	99.3
Decreased by between 5% and 15%	850	0.2
Decreased by 15% or more	0	0.0

As Table 2 shows, 99.3 percent of all IRF cases are in CMGs and tiers that would experience less than a 5 percent change (either increase or decrease) in the CMG relative weight value as a result of the proposed revisions for FY 2018. The largest estimated increase in the proposed CMG relative weight values that affects the largest number of IRF discharges would be a 4.1 percent change in the CMG relative weight value for CMG 0603—Neurological, with a motor score greater than 25.85 and less than 37.35—in tier 1. In the FY 2016 claims data, 1,322 IRF discharges (0.3 percent of all IRF discharges) were classified into this CMG and tier.

The largest decrease in a CMG relative weight value affecting the largest number of IRF cases would be a 3.6 percent decrease in the CMG relative weight for CMG 0506—Non-traumatic spinal cord injury, with a motor score less than 23.75—in tier 3. In the FY 2016 IRF claims data, this change would have affected 2,395 cases (0.6 percent of all IRF cases).

The proposed changes in the average length of stay values for FY 2018, compared with the FY 2017 average length of stay values, are small and do not show any particular trends in IRF length of stay patterns.

We invite public comment on our proposed updates to the CMG relative weights and average length of stay values for FY 2018.

IV. Facility-Level Adjustment Factors

Section 1886(j)(3)(A)(v) of the Act confers broad authority upon the Secretary to adjust the per unit payment rate by such factors as the Secretary determines are necessary to properly reflect variations in necessary costs of treatment among rehabilitation facilities. Under this authority, we currently adjust the prospective payment amount associated with a CMG to account for facility-level characteristics such as an IRF's LIP, teaching status, and location in a rural

area, if applicable, as described in § 412.624(e).

Based on the substantive changes to the facility-level adjustment factors that were adopted in the FY IRF PPS 2014 final rule (78 FR 47860, 47868 through 47872), in the FY 2015 IRF PPS final rule (79 FR 45872, 45882 through 45883), we froze the facility-level adjustment factors at the FY 2014 levels for FY 2015 and all subsequent years (unless and until we propose to update them again through future notice-and-comment rulemaking). For FY 2018, we will continue to hold the adjustment factors at the FY 2014 levels as we continue to monitor the most current IRF claims data available and continue to evaluate and monitor the effects of the FY 2014 changes.

V. Proposed FY 2018 IRF PPS Payment Update

A. Background

Section 1886(j)(3)(C) of the Act requires the Secretary to establish an increase factor that reflects changes over time in the prices of an appropriate mix of goods and services included in the IRF PPS payment, which is referred to as a market basket index. According to section 1886(j)(3)(A)(i) of the Act, the increase factor shall be used to update the IRF prospective payment rates for each FY. Section 1886(j)(3)(C)(ii)(I) of the Act requires the application of a productivity adjustment, as described in this section. In addition, sections 1886(j)(3)(C)(ii)(II) and 1886(j)(3)(D)(v) of the Act require the application of a 0.75 percentage point reduction to the market basket increase factor for FY 2018. However, section 411(b) of the Medicare Access and CHIP Reauthorization Act of 2015 (MACRA) amended section 1886(j)(3)(C) of the Act by adding clause (iii), which provides that the increase factor for fiscal year 2018, after the application of the productivity adjustment and other adjustment, must be 1.0 percent. In accordance with section 1886(j)(3)(C)(iii) of the Act, we are applying an increase factor of 1.0 percent to update the proposed IRF prospective payment rates for FY 2018 in this proposed rule.

For FY 2015, IRF PPS payments were updated using the 2008-based RPL market basket. Beginning with the FY 2016 IRF PPS, we created and adopted a stand-alone IRF market basket, which was referred to as the 2012-based IRF market basket, reflecting the operating and capital cost structures for freestanding IRFs and hospital-based IRFs. The general structure of the 2012-based IRF market basket is similar to the 2008-based RPL market basket; however, we made several notable changes. In developing the 2012-based IRF market basket, we derived cost weights from Medicare cost report data for both freestanding and hospital-based IRFs (the 2008-based RPL market basket was based on freestanding data only), incorporated the 2007 Input-Output data from the Bureau of Economic Analysis (the 2008-based RPL market basket was based on the 2002 Input-Output data); used new price proxy blends for two cost categories (Fuel, Oil, and Gasoline and Medical Instruments); added one additional cost category (Installation, Maintenance, and Repair), which was previously included in the residual All Other Services: Labor-Related cost category of the 2008-based RPL market basket; and eliminated three cost categories (Apparel, Machinery & Equipment, and Postage). The FY 2016 IRF PPS final rule (80 FR 47046 through 47068) contains a complete discussion of the development of the 2012-based IRF market basket.

B. Proposed FY 2018 Market Basket Update and Productivity Adjustment

As noted above, in accordance with section 1886(j)(3)(C)(iii) of the Act, as added by section 411(b) of MACRA, we are applying an increase factor of 1.0 percent to update the proposed IRF prospective payment rates for FY 2018 in this proposed rule. For comparison purposes, we are providing an estimate of what the proposed IRF increase factor would have been for FY 2018 prior to the enactment of section 411(b) of MACRA. This estimate is based on the same methodology described in the FY 2017 IRF PPS final rule (81 FR 52071) and IHS Global Insight Inc.'s first quarter 2017 forecast of the market basket update and MFP adjustment with historical data through the fourth quarter 2016. IHS Global Insight Inc. is a nationally recognized economic and financial forecasting firm with which CMS contracts to forecast the components of the market baskets and MFP. Using this methodology, the proposed FY 2018 payment increase factor would be 1.55 percent (based on IHS Global Insight, Inc.'s first quarter 2017 forecast with historical data through the fourth quarter of 2016), reflecting a FY 2018 estimated market basket update of 2.7 percent as required by section 1886(j)(3)(C) of the Act, with an estimated productivity adjustment of 0.4 percentage point as required by section 1886(j)(3)(C)(ii)(I) of the Act, and a 0.75 percentage point reduction as required by sections 1886(j)(3)(C)(ii)(II) and 1886(j)(3)(D)(v) of the Act. However, section 411(b) of MACRA amended section 1886(j)(3)(C) of the Act by adding clause (iii), which provides that the increase factor for fiscal year 2018, after the application of the productivity adjustment and other adjustment, must be 1.0 percent.

For FY 2018, the Medicare Payment Advisory Commission (MedPAC) recommends that we reduce IRF PPS payment rates by 5 percent. As discussed, and in accordance with sections 1886(j)(3)(C) and 1886(j)(3)(D) of the Act, as amended by MACRA, the Secretary will update the IRF PPS payment rates for FY 2018 by 1.0 percent, as section 1886(j)(3)(C) of the Act does not provide the Secretary with the authority to apply a different update factor to IRF PPS payment rates for FY 2018.

We invite public comment on this proposal.

C. Proposed Labor-Related Share for FY 2018

Section 1886(j)(6) of the Act specifies that the Secretary is to adjust the proportion (as estimated by the Secretary from time to time) of rehabilitation facilities' costs which are attributable to wages and wage-related costs of the prospective payment rates computed under section 1886(j)(3) for area differences in wage levels by a factor (established by the Secretary) reflecting the relative hospital wage level in the geographic area of the rehabilitation facility compared to the national average wage level for such facilities. The labor-related share is determined by identifying the national average proportion of total costs that are related to, influenced by, or vary with the local labor market. We continue to classify a cost category as labor-related if the costs are labor-intensive and vary with the local labor market.

Based on our definition of the labor-related share and the cost categories in the 2012-based IRF market basket, we propose to include in the labor-related share for FY 2018 the sum of the FY 2018 relative importance of Wages and Salaries, Employee Benefits, Professional Fees: Labor-Related, Administrative and Facilities Support Services, Installation, Maintenance, and Repair Services, All Other: Labor-related Services, and a portion of the Capital-Related cost weight from the 2012-based IRF market basket. For more details regarding the methodology for determining specific cost categories for inclusion in the 2012-based IRF labor-related share, see the FY 2016 IRF final rule (80 FR 47066 through 47068).

Using this method and the IHS Global Insight, Inc. first quarter 2017 forecast for the 2012-based IRF market basket,

the sum of the relative importance for FY 2018 operating costs (Wages and Salaries, Employee Benefits, Professional Fees: Labor-related, Administrative and Facilities Support Services, Installation Maintenance & Repair Services, and All Other: Labor-related Services) using the 2012-based IRF market basket is 66.9 percent. We propose that the portion of Capital-Related Costs that is influenced by the local labor market is estimated to be 46 percent. Incorporating the estimate of the FY 2018 relative importance of Capital-Related costs from the 2012-based IRF market basket based on IHS Global Insight's (IGI) first quarter 2017 forecast, which is 8.3 percent, we take 46 percent of 8.3 percent to determine the labor-related share of Capital for FY 2018. We propose to then add this amount (3.8 percent) to the sum of the relative importance for FY 2018 operating costs (66.9 percent) to determine the total proposed labor-related share for FY 2018 of 70.7 percent. We also propose that if more recent data are subsequently available, we would use such data to determine the FY 2018 IRF labor-related share in the final rule.

We invite public comment on this proposal.

TABLE 3—IRF LABOR-RELATED SHARE

	FY 2018 Proposed labor-related share [1]	FY 2017 Final labor related share [2]
Wages and Salaries	47.7	47.7
Employee Benefits	11.3	11.3
Professional Fees: Labor-related	3.4	3.5
Administrative and Facilities Support Services	0.8	0.8
Installation, Maintenance, and Repair Services	1.9	1.9
All Other: Labor-related Services	1.8	1.8
Subtotal	66.9	67.0
Labor-related portion of capital (46%)	3.8	3.9
Total Labor-Related Share	70.7	70.9

[1] Based on the 2012-based IRF Market Basket, IHS Global Insight, Inc. 1st quarter 2017 forecast.
[2] **Federal Register** (81 FR 52073).

D. Proposed Wage Adjustment

1. Background

Section 1886(j)(6) of the Act requires the Secretary to adjust the proportion of rehabilitation facilities' costs attributable to wages and wage-related costs (as estimated by the Secretary from time to time) by a factor (established by the Secretary) reflecting the relative hospital wage level in the geographic area of the rehabilitation facility compared to the national average wage level for those facilities. The Secretary is required to update the IRF PPS wage index on the basis of information available to the Secretary on the wages and wage-related costs to furnish rehabilitation services. Any adjustment or updates made under section 1886(j)(6) of the Act for a FY are made in a budget-neutral manner.

For FY 2018, we propose to maintain the policies and methodologies described in the FY 2017 IRF PPS final rule (81 FR 52055, 52073 through 52074) related to the labor market area definitions and the wage index methodology for areas with wage data. Thus, we propose to use the CBSA labor market area definitions and the FY 2017 pre-reclassification and pre-floor hospital wage index data. In accordance with section 1886(d)(3)(E) of the Act, the FY 2017 pre-reclassification and pre-floor hospital wage index is based on data submitted for hospital cost reporting periods beginning on or after October 1, 2012, and before October 1, 2013 (that is, FY 2013 cost report data).

The labor market designations made by the OMB include some geographic areas where there are no hospitals and, thus, no hospital wage index data on which to base the calculation of the IRF PPS wage index. We propose to continue to use the same methodology discussed in the FY 2008 IRF PPS final rule (72 FR 44299) to address those geographic areas where there are no hospitals and, thus, no hospital wage index data on which to base the calculation for the FY 2018 IRF PPS wage index.

We invite public comment on this proposal.

2. Update

The wage index used for the IRF PPS is calculated using the pre-reclassification and pre-floor acute care hospital wage index data and is assigned to the IRF on the basis of the labor market area in which the IRF is geographically located. IRF labor market areas are delineated based on the CBSAs established by the OMB. In the FY 2016 IRF PPS final rule (80 FR 47036, 47068), we established an IRF wage index based on FY 2011 acute care hospital wage data to adjust the FY 2016 IRF payment rates. We also adopted the revised CBSAs set forth by OMB. The current CBSA delineations (which were implemented for the IRF PPS beginning with FY 2016) are based on revised OMB delineations issued on February 28, 2013, in OMB Bulletin No. 13–01. OMB Bulletin No. 13–01 established revised delineations for Metropolitan Statistical Areas, Micropolitan Statistical Areas, and Combined Statistical Areas in the United States and Puerto Rico, and provided guidance on the use of the delineations of these statistical areas based on new standards published on June 28, 2010, in the **Federal Register** (75 FR 37246 through 37252). A copy of this bulletin may be obtained at *https://obamawhitehouse.archives.gov/sites/default/files/omb/bulletins/2013/b13-01.pdf.*

Generally, OMB issues major revisions to statistical areas every 10 years, based on the results of the decennial census. However, OMB occasionally issues minor updates and revisions to statistical areas in the years between the decennial censuses. On July 15, 2015, OMB issued OMB Bulletin No. 15–01, which provides minor updates to and supersedes OMB Bulletin No. 13–01 that was issued on February 28, 2013. The attachment to OMB Bulletin No. 15–01 provides detailed information on the update to statistical areas since February 28, 2013. The updates provided in OMB Bulletin No. 15–01 are based on the application

of the 2010 Standards for Delineating Metropolitan and Micropolitan Statistical Areas to Census Bureau population estimates for July 1, 2012 and July 1, 2013. The complete list of statistical areas incorporating these changes is provided in OMB Bulletin No. 15–01. A copy of this bulletin may be obtained at *https://obamawhitehouse.archives.gov/sites/default/files/omb/bulletins/2015/15-01.pdf*.

According to OMB, the bulletin establishes revised delineations for the Nation's Metropolitan Statistical Areas, Micropolitan Statistical Areas, and Combined Statistical Areas. The bulletin also provides delineations of Metropolitan Divisions as well as delineations of New England City and Town Areas. OMB Bulletin No. 15–01 made the following changes that are relevant to the IRF wage index:

- Garfield County, OK, with principal city Enid, OK, which was a Micropolitan (geographically rural) area, now qualifies as an urban new CBSA 21420 called Enid, OK.
- The county of Bedford City, VA, a component of the Lynchburg, VA CBSA 31340, changed to town status and is added to Bedford County. Therefore, the county of Bedford City (SSA State county code 49088, FIPS State County Code 51515) is now part of the county of Bedford, VA (SSA State county code 49090, FIPS State County Code 51019). However, the CBSA remains Lynchburg, VA, 31340.
- The name of Macon, GA, CBSA 31420, as well as a principal city of the Macon-Warner Robins, GA combined statistical area, is now Macon-Bibb County, GA. The CBSA code remains as 31420.

We believe that it is important for the IRF PPS to use the latest labor market area delineations available as soon as is reasonably possible to maintain a more accurate and up-to-date payment system that reflects the reality of population shifts and labor market conditions. As discussed in the FY 2017 Inpatient prospective payment system (IPPS) and Long-Term Care Hospital (LTCH) PPS final rule (81 FR 56913), these updated labor market area definitions were implemented under the IPPS beginning on October 1, 2016. Therefore, we are proposing to implement these revisions for the IRF PPS beginning October 1, 2017, consistent with our historical practice of modeling IRF PPS adoption of the labor market area delineations after IPPS adoption of these delineations. We invite public comments on this proposal.

3. Transition Period

In FY 2016, we applied a transition period when implementing the OMB delineations as described in the February 28, 2013 OMB Bulletin No. 13–01, as this bulletin contained a number of significant changes that resulted in substantial payment implications for some IRF providers. We are proposing to incorporate the CBSA changes published in the most recent OMB bulletin without a transition period as we anticipate that these changes will have minor effects for a single IRF provider. One provider, located in Garfield County, OK and designated as rural in FY 2017, will be designated as urban in FY 2018. While this provider will lose the 14.9 percent rural adjustment in FY 2018, this provider will experience an increase of 13 percent in their proposed wage index value. As this provider is not expected to experience as steep of a reduction in payments as the majority of facilities for which a phase out of the rural adjustment was implemented, we do not believe it is appropriate or necessary to adopt a transition policy. As the changes made in OMB Bulletin No 15–01 are minor and do not have a large effect on a substantial number of providers, we are not proposing a transition period to adopt these updates.

In FY 2016, we applied a 1-year blended wage index for all IRF providers to mitigate the impact of the wage index change due to the implementation of the revised CBSA delineations. In FY 2016, all IRF providers received a blended wage index using 50 percent of their FY 2016 wage index based on the revised OMB CBSA delineations and 50 percent of their FY 2016 wage index based on the OMB delineations used in FY 2015. This 1-year blended wage index became effective on October 1, 2015 and expired on September 30, 2016.

For FY 2016, in addition to the blended wage index, we also adopted a three-year budget neutral phase out of the rural adjustment for FY 2015 rural IRFs that became urban in FY 2016 under the revised CBSA delineations. In FY 2016, IRFs that were designated as rural in FY 2015 and became designated as urban in FY 2016 received two-thirds of the 2015 rural adjustment of 14.9 percent. In FY 2017, the second year of the 3-year phase out, these IRFs received one-third of the 2015 rural adjustment of 14.9 percent, as finalized in the FY 2017 IRF PPS final rule (81 FR 52055, 52074 through 52076). FY 2018 represents the third and final year of the three-year phase out of the rural adjustment. We will no longer apply any portion of the rural adjustment for IRFs that became urban in FY 2016 under the revised CBSA delineations, as finalized in the FY 2016 IRF PPS final rule (80 FR 47036, 47073 through 47074). We are not proposing any additional wage index transition adjustments for IRF providers due to the adoption of the new OMB delineations in FY 2016. We refer readers to the FY 2016 IRF PPS final rule (80 FR 47036, 47068 through 47076) for a full discussion of our implementation of the new OMB labor market area delineations for the FY 2016 wage index. The proposed wage index applicable to FY 2018 is available on the CMS Web site at *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientRehabFacPPS/Data-Files.html*. Table A is for urban areas, and Table B is for rural areas.

To calculate the wage-adjusted facility payment for the payment rates set forth in this proposed rule, we multiply the unadjusted federal payment rate for IRFs by the FY 2018 labor-related share based on the 2012-based IRF market basket (70.7 percent) to determine the labor-related portion of the standard payment amount. A full discussion of the calculation of the labor-related share is located in section V.C of this proposed rule. We then multiply the labor-related portion by the applicable IRF wage index from the tables in the addendum to this proposed rule. These tables are available through the Internet on the CMS Web site at *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientRehabFacPPS/Data-Files.html*.

Adjustments or updates to the IRF wage index made under section 1886(j)(6) of the Act must be made in a budget-neutral manner. We propose to calculate a budget-neutral wage adjustment factor as established in the FY 2004 IRF PPS final rule (68 FR 45689), codified at § 412.624(e)(1), as described in the steps below. We propose to use the listed steps to ensure that the FY 2018 IRF standard payment conversion factor reflects the proposed update to the wage indexes (based on the FY 2013 hospital cost report data) and the labor-related share in a budget-neutral manner:

Step 1. Determine the total amount of the estimated FY 2017 IRF PPS payments, using the FY 2017 standard payment conversion factor and the labor-related share and the wage indexes from FY 2017 (as published in the FY 2017 IRF PPS final rule (81 FR 52056)).

Step 2. Calculate the total amount of estimated IRF PPS payments using the proposed FY 2018 standard payment

conversion factor and the proposed FY 2018 labor-related share and CBSA urban and rural wage indexes.

Step 3. Divide the amount calculated in step 1 by the amount calculated in step 2. The resulting quotient is the proposed FY 2018 budget-neutral wage adjustment factor of 1.0007.

Step 4. Apply the proposed FY 2018 budget-neutral wage adjustment factor from step 3 to the FY 2017 IRF PPS standard payment conversion factor after the application of the increase factor to determine the proposed FY 2018 standard payment conversion factor.

We discuss the calculation of the proposed standard payment conversion factor for FY 2018 in section V.E of this proposed rule.

We invite public comment on the proposed IRF wage adjustment for FY 2018.

E. Description of the Proposed IRF Standard Payment Conversion Factor and Payment Rates for FY 2018

To calculate the proposed standard payment conversion factor for FY 2018, as illustrated in Table 4, we begin by applying the proposed increase factor for FY 2018, as adjusted in accordance with sections 1886(j)(3)(C)(iii) of the Act, as added by MACRA, to the standard payment conversion factor for FY 2017 ($15,708). Applying the proposed 1.0 percent increase factor for FY 2018 to the standard payment conversion factor for FY 2017 of $15,708 yields a standard payment amount of $15,865. Then, we apply the budget neutrality factor for the FY 2018 wage index and labor-related share of 1.0007, which results in a proposed standard payment amount of $15,876. We next apply the proposed budget neutrality factor for the revised CMG relative weights of 0.9974, which results in the proposed standard payment conversion factor of $15,835 for FY 2018.

TABLE 4—CALCULATIONS TO DETERMINE THE PROPOSED FY 2018 STANDARD PAYMENT CONVERSION FACTOR

Explanation for adjustment	Calculations
Standard Payment Conversion Factor for FY 2017	$15,708
Market Basket Increase Factor for FY 2018 (1.0 percent), as required by section 1886(j)(3)(C)(iii) of the Act	× 1.0100
Budget Neutrality Factor for the Wage Index and Labor-Related Share	× 1.0007
Budget Neutrality Factor for the Revisions to the CMG Relative Weights	× 0.9974
Proposed FY 2018 Standard Payment Conversion Factor	= $15,835

We invite public comment on the proposed FY 2018 standard payment conversion factor.

After the application of the proposed CMG relative weights described in section III of this proposed rule to the proposed FY 2018 standard payment conversion factor ($15,835), the resulting unadjusted IRF prospective payment rates for FY 2018 are shown in Table 5.

TABLE 5—PROPOSED FY 2018 PAYMENT RATES

CMG	Payment rate tier 1	Payment rate tier 2	Payment rate tier 3	Payment rate no comorbidity
0101	$ 13,432.83	$ 11,527.88	$ 10,647.45	$ 10,170.82
0102	16,895.95	14,500.11	13,393.24	12,793.10
0103	19,111.26	16,400.31	15,149.34	14,470.02
0104	20,498.41	17,591.10	16,248.29	15,521.47
0105	23,839.59	20,458.82	18,897.49	18,050.32
0106	26,409.61	22,664.64	20,933.87	19,996.44
0107	29,486.35	25,304.33	23,372.46	22,325.77
0108	37,503.61	32,183.05	29,727.05	28,395.32
0109	33,776.06	28,984.38	26,772.23	25,573.53
0110	44,092.56	37,839.32	34,951.01	33,384.93
0201	13,323.57	10,736.13	9,774.95	8,980.03
0202	17,217.40	13,874.63	12,631.58	11,605.47
0203	19,925.18	16,056.69	14,617.29	13,429.66
0204	21,974.23	17,706.70	16,120.03	14,810.48
0205	25,833.22	20,816.69	18,951.33	17,412.17
0206	31,199.70	25,141.23	22,887.91	21,028.88
0207	39,750.60	32,032.62	29,161.74	26,792.82
0301	18,446.19	14,946.66	13,588.01	12,837.43
0302	22,393.86	18,146.91	16,496.90	15,584.81
0303	26,327.27	21,332.91	19,394.71	18,322.68
0304	34,119.67	27,646.33	25,133.31	23,744.58
0401	14,205.58	13,252.31	11,806.58	10,653.79
0402	20,747.02	19,355.12	17,241.15	15,557.89
0403	33,631.96	31,373.89	27,948.78	25,220.40
0404	58,906.20	54,953.78	48,953.90	44,174.90
0405	54,245.96	50,605.49	45,080.66	40,680.12
0501	14,878.57	11,177.93	10,588.86	9,716.36
0502	19,342.45	14,533.36	13,765.37	12,633.16
0503	24,227.55	18,203.92	17,242.73	15,822.33
0504	27,510.15	20,669.43	19,578.39	17,966.39
0505	31,622.50	23,758.83	22,504.70	20,652.01
0506	43,669.76	32,811.70	31,079.35	28,520.42
0601	16,908.61	12,921.36	11,987.10	10,907.15

TABLE 5—PROPOSED FY 2018 PAYMENT RATES—Continued

CMG	Payment rate tier 1	Payment rate tier 2	Payment rate tier 3	Payment rate no comorbidity
0602	22,058.16	16,857.94	15,638.65	14,229.33
0603	27,054.10	20,674.18	19,179.35	17,451.75
0604	35,180.62	26,884.66	24,940.13	22,693.14
0701	16,460.48	13,154.13	12,490.65	11,377.45
0702	20,851.53	16,663.17	15,823.92	14,413.02
0703	25,209.32	20,145.29	19,131.85	17,424.83
0704	31,951.86	25,533.94	24,248.14	22,085.07
0801	13,895.21	10,218.33	9,703.69	8,956.28
0802	17,839.71	13,119.30	12,458.98	11,499.38
0803	23,084.26	16,976.70	16,121.61	14,878.57
0804	21,241.07	15,621.23	14,834.23	13,690.94
0805	25,198.24	18,531.70	17,599.02	16,241.96
0806	30,463.37	22,403.36	21,275.91	19,635.40
0901	15,993.35	12,801.01	11,472.46	10,666.46
0902	21,024.13	16,827.85	15,081.25	14,023.48
0903	25,796.80	20,648.84	18,504.78	17,206.31
0904	32,319.24	25,869.64	23,184.02	21,556.19
1001	16,547.58	14,253.08	12,571.41	11,475.62
1002	21,781.04	18,759.72	16,547.58	15,103.42
1003	31,820.43	27,407.22	24,173.71	22,066.07
1101	20,745.43	18,579.21	16,078.86	13,909.46
1102	30,054.83	26,917.92	23,294.87	20,153.20
1201	19,326.62	14,533.36	13,572.18	12,492.23
1202	24,997.13	18,797.73	17,554.68	16,156.45
1203	30,585.30	23,000.34	21,478.59	19,770.00
1301	19,445.38	14,690.13	13,195.31	12,626.83
1302	26,735.81	20,197.54	18,142.16	17,361.49
1303	34,813.25	26,300.35	23,624.24	22,606.05
1401	14,698.05	11,827.16	10,808.97	9,811.37
1402	19,370.96	15,587.97	14,246.75	12,929.28
1403	23,195.11	18,664.71	17,059.05	15,481.88
1404	29,375.51	23,636.90	21,603.69	19,606.90
1501	16,066.19	13,436.00	12,253.12	11,738.49
1502	20,829.36	17,420.08	15,885.67	15,220.60
1503	25,309.08	21,166.64	19,302.87	18,493.70
1504	31,377.05	26,241.76	23,929.85	22,925.91
1601	18,275.17	14,371.85	13,100.30	12,034.60
1602	24,335.23	19,136.60	17,443.84	16,025.02
1603	30,373.11	23,885.51	21,771.54	20,001.19
1701	18,976.66	14,775.64	13,348.91	12,251.54
1702	24,135.71	18,791.39	16,978.29	15,581.64
1703	28,531.50	22,214.92	20,070.86	18,420.86
1704	36,113.30	28,116.63	25,404.09	23,315.45
1801	20,678.93	15,936.34	14,013.98	12,916.61
1802	29,639.95	22,841.99	20,086.70	18,514.28
1803	46,309.46	35,688.92	31,383.39	28,925.79
1901	20,523.74	17,066.96	15,732.07	15,078.09
1902	35,350.05	29,394.51	27,096.85	25,969.40
1903	58,242.71	48,431.35	44,645.20	42,786.17
2001	14,918.15	12,088.44	11,038.58	10,021.97
2002	19,633.82	15,909.42	14,527.03	13,190.56
2003	24,400.15	19,771.58	18,053.48	16,390.81
2004	31,164.86	25,253.66	23,058.93	20,937.04
2101	29,158.57	28,852.95	21,925.14	20,549.08
5001	.....	.....	.....	2,481.34
5101	.....	.....	.....	10,424.18
5102	.....	.....	.....	25,953.57
5103	.....	.....	.....	12,843.77
5104	.....	.....	.....	32,197.31

F. Example of the Methodology for Adjusting the Proposed Prospective Payment Rates

Table 6 illustrates the methodology for adjusting the proposed federal prospective payments (as described in sections V.A. through V.F. of this proposed rule). The following examples are based on two hypothetical Medicare beneficiaries, both classified into CMG 0110 (without comorbidities). The proposed unadjusted prospective payment rate for CMG 0110 (without comorbidities) appears in Table 5.

Example: One beneficiary is in Facility A, an IRF located in rural Spencer County, Indiana, and another beneficiary is in Facility B, an IRF located in urban Harrison County, Indiana. Facility A, a rural non-teaching hospital has a Disproportionate Share

Hospital (DSH) percentage of 5 percent (which would result in a LIP adjustment of 1.0156), a wage index of 0.8167, and a rural adjustment of 14.9 percent. Facility B, an urban teaching hospital, has a DSH percentage of 15 percent (which would result in a LIP adjustment of 1.0454 percent), a wage index of 0.8859, and a teaching status adjustment of 0.0784.

To calculate each IRF's labor and non-labor portion of the prospective payment, we begin by taking the unadjusted prospective payment rate for CMG 0110 (without comorbidities) from Table 5. Then, we multiply the labor-related share for FY 2018 (70.7 percent) described in section V.C. of this proposed rule by the proposed unadjusted prospective payment rate. To determine the non-labor portion of the proposed prospective payment rate, we subtract the labor portion of the proposed federal payment from the proposed unadjusted prospective payment.

To compute the proposed wage-adjusted prospective payment, we multiply the labor portion of the proposed federal payment by the appropriate proposed wage index located in tables A and B. These tables are available on the CMS Web site at *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientRehabFacPPS/Data-Files.html*. The resulting figure is the wage-adjusted labor amount. Next, we compute the proposed wage-adjusted federal payment by adding the wage-adjusted labor amount to the non-labor portion.

Adjusting the proposed wage-adjusted federal payment by the facility-level adjustments involves several steps. First, we take the wage-adjusted prospective payment and multiply it by the appropriate rural and LIP adjustments (if applicable). Second, to determine the appropriate amount of additional payment for the teaching status adjustment (if applicable), we multiply the teaching status adjustment (0.0784, in this example) by the wage-adjusted and rural-adjusted amount (if applicable). Finally, we add the additional teaching status payments (if applicable) to the wage, rural, and LIP-adjusted prospective payment rates. Table 6 illustrates the components of the adjusted payment calculation.

TABLE 6—EXAMPLE OF COMPUTING THE FY 2018 IRF PROSPECTIVE PAYMENT

Steps		Rural facility A (Spencer Co., IN)
1. Unadjusted Payment	$33,384.93	$33,384.93
2. Labor Share	× 0.707	× 0.707
3. Labor Portion of Payment	= $23,603.15	= $23,603.15
4. CBSA-Based Wage Index (shown in the Addendum, Tables A and B)	× 0.8167	× 0.8859
5. Wage-Adjusted Amount	= $19,276.69	= $20,910.03
6. Non-Labor Amount	+ $9,781.78	+ $9,781.78
7. Wage-Adjusted Payment	= $29,058.47	= $30,691.81
8. Rural Adjustment	× 1.149	× 1.000
9. Wage- and Rural-Adjusted Payment	= $33,388.19	= $30,691.81
10. LIP Adjustment	× 1.0156	× 1.0454
11. Wage-, Rural- and LIP-Adjusted Payment	= $33,909.04	= $32,085.22
12. Wage- and Rural-Adjusted Payment	$33,388.19	$30,691.81
13. Teaching Status Adjustment	× 0	× 0.0784
14. Teaching Status Adjustment Amount	= $0.00	= $2,406.24
15. Wage-, Rural-, and LIP-Adjusted Payment	+ $33,909.04	+ $32,085.22
16. Total Adjusted Payment	= $33,909.04	= $34,491.46

Thus, the proposed adjusted payment for Facility A would be $33,909.04, and the proposed adjusted payment for Facility B would be $34,491.46.

VI. Proposed Update to Payments for High-Cost Outliers Under the IRF PPS

A. Proposed Update to the Outlier Threshold Amount for FY 2018

Section 1886(j)(4) of the Act provides the Secretary with the authority to make payments in addition to the basic IRF prospective payments for cases incurring extraordinarily high costs. A case qualifies for an outlier payment if the estimated cost of the case exceeds the adjusted outlier threshold. We calculate the adjusted outlier threshold by adding the IRF PPS payment for the case (that is, the CMG payment adjusted by all of the relevant facility-level adjustments) and the adjusted threshold amount (also adjusted by all of the relevant facility-level adjustments). Then, we calculate the estimated cost of a case by multiplying the IRF's overall CCR by the Medicare allowable covered charge. If the estimated cost of the case is higher than the adjusted outlier threshold, we make an outlier payment for the case equal to 80 percent of the difference between the estimated cost of the case and the outlier threshold.

In the FY 2002 IRF PPS final rule (66 FR 41362 through 41363), we discussed our rationale for setting the outlier threshold amount for the IRF PPS so that estimated outlier payments would equal 3 percent of total estimated payments. For the 2002 IRF PPS final rule, we analyzed various outlier policies using 3, 4, and 5 percent of the total estimated payments, and we concluded that an outlier policy set at 3 percent of total estimated payments would optimize the extent to which we could reduce the financial risk to IRFs of caring for high-cost patients, while still providing for adequate payments for all other (non-high cost outlier) cases.

Subsequently, we updated the IRF outlier threshold amount in the FYs 2006 through 2017 IRF PPS final rules and the FY 2011 and FY 2013 notices (70 FR 47880, 71 FR 48354, 72 FR 44284, 73 FR 46370, 74 FR 39762, 75 FR 42836, 76 FR 47836, 76 FR 59256, and 77 FR 44618, 78 FR 47860, 79 FR 45872, 80 FR 47036, 81 FR 52056, respectively) to maintain estimated outlier payments at 3 percent of total estimated payments. We also stated in the FY 2009 final rule (73 FR 46370 at 46385) that we would continue to analyze the estimated outlier payments for subsequent years and adjust the outlier threshold amount as appropriate to maintain the 3 percent target.

To update the IRF outlier threshold amount for FY 2018, we propose to use FY 2016 claims data and the same methodology that we used to set the initial outlier threshold amount in the

FY 2002 IRF PPS final rule (66 FR 41316 and 41362 through 41363), which is also the same methodology that we used to update the outlier threshold amounts for FYs 2006 through 2017. Based on an analysis of the preliminary data used for the proposed rule, we estimated that IRF outlier payments as a percentage of total estimated payments would be approximately 3.0 percent in FY 2017. Therefore, we propose to update the outlier threshold amount from $7,984 for FY 2017 to $8,656 for FY 2018 to maintain estimated outlier payments at approximately 3 percent of total estimated aggregate IRF payments for FY 2018.

Although our analysis shows that we achieved our goal to have estimated outlier payments equal 3.0 percent of total IRF payments for FY 2017, we still need to adjust the IRF outlier threshold to reflect changes in estimated costs and payments for IRFs in FY 2018. That is, as discussed previously in this proposed rule, we are proposing to increase IRF PPS payment rates by 1.0 percent, in accordance with section 1886(j)(3)(C)(iii) of the Act. Similarly, IRF estimated costs for FY 2018 are expected to increase. Therefore, we propose to update the outlier threshold amount from $7,984 for FY 2017 to $8,656 for FY 2018 to account for the increases in IRF PPS payments and estimated costs, to maintain estimated outlier payments at approximately 3 percent of total estimated aggregate IRF payments for FY 2018.

We invite public comment on the proposed update to the FY 2018 outlier threshold amount to maintain estimated outlier payments at approximately 3 percent of total estimated IRF payments.

B. Proposed Update to the IRF Cost-to-Charge Ratio Ceiling and Urban/Rural Averages

Cost-to-charge ratios are used to adjust charges from Medicare claims to costs and are computed annually from facility-specific data obtained from Medicare cost reports. IRF specific cost-to-charge ratios are used in the development of the CMG relative weights and the calculation of outlier payments under the IRF prospective payment system. In accordance with the methodology stated in the FY 2004 IRF PPS final rule (68 FR 45674, 45692 through 45694), we propose to apply a ceiling to IRFs' CCRs. Using the methodology described in that final rule, we propose to update the national urban and rural CCRs for IRFs, as well as the national CCR ceiling for FY 2017, based on analysis of the most recent data that is available. We apply the national urban and rural CCRs in the following situations:

- New IRFs that have not yet submitted their first Medicare cost report.
- IRFs whose overall CCR is in excess of the national CCR ceiling for FY 2018, as discussed below in this section.
- Other IRFs for which accurate data to calculate an overall CCR are not available.

Specifically, for FY 2018, we propose to estimate a national average CCR of 0.516 for rural IRFs, which we calculated by taking an average of the CCRs for all rural IRFs using their most recently submitted cost report data. Similarly, we propose to estimate a national average CCR of 0.416 for urban IRFs, which we calculated by taking an average of the CCRs for all urban IRFs using their most recently submitted cost report data. We apply weights to both of these averages using the IRFs' estimated costs, meaning that the CCRs of IRFs with higher total costs factor more heavily into the averages than the CCRs of IRFs with lower total costs. For this proposed rule, we have used the most recent available cost report data (FY 2015). This includes all IRFs whose cost reporting periods begin on or after October 1, 2014, and before October 1, 2015. If, for any IRF, the FY 2015 cost report was missing or had an ''as submitted'' status, we used data from a previous fiscal year's (that is, FY 2004 through FY 2014) settled cost report for that IRF. We do not use cost report data from before FY 2004 for any IRF because changes in IRF utilization since FY 2004 resulting from the 60 percent rule and IRF medical review activities suggest that these older data do not adequately reflect the current cost of care.

In accordance with past practice, we propose to set the national CCR ceiling at 3 standard deviations above the mean CCR. Using this method, the proposed national CCR ceiling would be 1.28 for FY 2018. This means that, if an individual IRF's CCR were to exceed this proposed ceiling of 1.28 for FY 2018, we would replace the IRF's CCR with the appropriate proposed national average CCR (either rural or urban, depending on the geographic location of the IRF). We calculated the proposed national CCR ceiling by:

Step 1. Taking the national average CCR (weighted by each IRF's total costs, as previously discussed) of all IRFs for which we have sufficient cost report data (both rural and urban IRFs combined).

Step 2. Estimating the standard deviation of the national average CCR computed in step 1.

Step 3. Multiplying the standard deviation of the national average CCR computed in step 2 by a factor of 3 to compute a statistically significant reliable ceiling.

Step 4. Adding the result from step 3 to the national average CCR of all IRFs for which we have sufficient cost report data, from step 1.

The proposed national average rural and urban CCRs and the proposed national CCR ceiling in this section will be updated in the final rule if more recent data becomes available to use in these analyses.

We invite public comment on the proposed update to the IRF CCR ceiling and the urban/rural averages for FY 2018.

VII. Proposed Removal of the 25 Percent Payment Penalty for IRF–PAI Late Submissions

Under section 1886(j)(2)(D) of the Act, the Secretary is authorized to require rehabilitation facilities that provide inpatient hospital services to submit such data as the Secretary deems necessary to establish and administer the IRF PPS. The timely collection of patient data is indispensable for the successful operation of the IRF PPS. A comprehensive, reliable system for collecting standardized patient assessment data is necessary to assign beneficiaries to the appropriate CMGs, to monitor the effects of the IRF PPS on patient care and outcomes, and to determine whether adjustments to the CMGs are warranted.

In the FY 2002 IRF PPS final rule (66 FR 41316), we implemented the IRF–PAI data collection instrument, through which IRFs are required to collect and electronically submit patient data for all Medicare Part A FFS patients. IRFs are required to submit their IRF–PAI to CMS through its contractor, currently the CMS National Assessment Collection Database, in accordance with the requirements in §§ 412.610(c)(2)(i)(B), 412.610(d), and 412.614(c). To encourage timely filling, the requirement at § 412.614(d)(1)(ii) provides that failure to submit the IRF–PAI on Medicare Part A FFS patients within the required deadline would result in the imposition of a 25 percent payment penalty.

The FY 2010 IRF PPS final rule (74 FR 39798 through 39800) expanded collection of IRF–PAI data to Medicare Part C (Medicare Advantage) IRF patients. IRFs that failed to timely submit IRF–PAIs on their Part C patients would forfeit their ability to have any of their Part C data used in the calculations for determining their eligibility for exclusion under § 412.23(b). We are not

proposing any changes to the Medicare Part C IRF–PAI submission requirements or the consequences of failure to submit complete and timely IRF–PAI data for Medicare Part C (Medicare Advantage) patients in this proposed rule.

Effective October 1, 2012, we issued a change request (CR 7760) that created a new edit within the Fiscal Intermediary Shared System (FISS) for IRF PPS claim submissions. In the event that an IRF attempts to submit a Medicare Part-A FFS claim for a patient, and there is not a corresponding IRF–PAI for the patient on file to match the claim with, the FISS edit will return an error to the IRF provider advising that an IRF–PAI needs to be submitted. Since IRFs can now only receive payment from Medicare for a Medicare Part-A FFS patient when both an IRF claim and an IRF–PAI are submitted and matched accordingly, we believe that they will be financially motivated to file a patient's claim and the patient's corresponding IRF–PAI in a timely manner. Therefore, we believe that the 25 percent payment penalty for late transmission of the IRF–PAI is no longer needed to encourage providers to submit data to CMS.

Furthermore, we believe that the 25 percent payment penalty is no longer necessary, and we also believe it is placing an unnecessary burden on IRFs when they need to apply for a waiver from the penalty. Section 412.614(e) enables CMS to waive the 25 percent payment penalty in extraordinary situations that are beyond the control of the IRF. These include, but are not limited to, fires, floods, earthquakes, or similar unusual events that inflect extensive damage to an inpatient facility as well as situations in which data transmission issues beyond the control of the IRF have made it impossible for the IRF to submit IRF–PAIs in the required timeframe. In such instances, IRFs have generally filed waiver requests under the waiver provision. We review each waiver request on a case-by-case basis and have found that the vast majority of the requests that we received since October 2012 met the waiver criteria. In such cases, the penalty is waived per § 412.614(e), the claim is reprocessed, and the IRF is paid for the claim in full. Of the approximately 10,000 fee-for-service IRF–PAIs that we estimate (based on FY 2015 data) are transmitted late each year, amounting to a total payment penalty of approximately $37.6 million per year, the vast majority qualify for a waiver under § 412.614(e). Thus, based on our review of our records, we have found that the vast majority of these cases incurred the expenses of the IRF requesting a waiver, CMS reviewing the waiver request, and CMS reprocessing the applicable claims. Without the 25 percent payment penalty, this process, where the vast majority of cases ultimately meet the waiver criteria, would also no longer by necessary.

We are not proposing any changes to the timely filing requirements at § 412.614(c). However, we are proposing to remove the payment penalty by revising the following regulations that pertain to the application of the 25 percent payment penalty for late transmission of the IRF–PAI. These changes would become effective for all discharges beginning on or after October 1, 2017.

- Revise § 412.614(d) Consequences of failure to submit complete and timely IRF–PAI data.
- Revise § 412.614(d)(1).
- Revise § 412.614(d)(1)(i).
- Reserve § 412.614(d)(1)(ii).
- Revise § 412.614(e) Exemption to the consequences for transmitting the IRF–PAI data late. We invite public comment on our proposal to remove and revise the regulations pertaining to the 25 percent payment penalty for late transmission of the IRF–PAI.

VIII. Proposed Revision to the IRF–PAI To Remove the Voluntary Item 27 (Swallowing Status)

In the FY 2014 IRF PPS final rule (78 FR 47896 through 47897), we removed the voluntary items 25, 26, and 28 from the IRF–PAI as we believed that the information should be well documented in the patient's medical record at the IRF. We chose not to remove the voluntary item 27: Swallowing status, from the IRF–PAI at the time because we believed that it was an integral part of the patient's IRF care and should continue to be evaluated and monitored.

In the FY 2016 IRF PPS final rule (80 FR 47113 through 47117), we revised the IRF–PAI to include new items that assess functional status and the risk factor items. Section K-Swallowing/Nutritional Status, was added to the IRF–PAI as a risk adjustor for the functional outcome measures. We believe that continuing to collect data for voluntary item 27: Swallowing status, on the IRF–PAI would be duplicative since the new quality item captures very similar data. Furthermore, to the extent that such information would be relevant to the provision of patient care, this information should be captured in either the transfer documentation from the referring physician, or the patient's initial assessment documentation. At this time, we no longer believe that voluntary item 27 is necessary, and in the interest of reducing burden on providers, we are proposing to remove this item from the IRF–PAI for all IRF discharges beginning on or after October 1, 2017.

We invite public comment on our proposal to remove the swallowing status item from the IRF–PAI.

IX. Proposed Refinements to the Presumptive Compliance Methodology ICD–10–CM Diagnosis Codes

A. Background on the IRF 60 Percent Rule

The compliance percentage has been part of the criteria for defining IRFs since implementation of the Inpatient Prospective Payment System (IPPS) in 1983. In the FY 2015 IRF PPS final rule (79 FR 45872, 45891 through 45892), we discussed the development of the compliance percentage or the ''60 percent rule.'' We refer readers to that discussion for background on the 60 percent rule and the IRF PPS.

B. Enforcement of the IRF 60 Percent Rule

As described in detail in Chapter 3, section 140.1.3 of the Medicare Claims Processing Manual (Pub. 100–04), which is located on the Web site at *https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Internet-Only-Manuals-IOMs.html,* the MACs evaluate IRFs' compliance with the 60 percent rule policies annually, using two different methods. One of these methods is called the presumptive compliance method, and the other method is called the medical review method.

1. Presumptive Compliance Method

The presumptive compliance method is typically the first method MACs use to evaluate an IRF's compliance with the 60 percent rule. To use the presumptive compliance method, an IRF must first demonstrate that it treats a patient population that consists of at least 50 percent Medicare FFS or MA patients. If it cannot meet this requirement, then the MAC is required to evaluate the IRF's compliance using the medical review method (described below in this section).

The presumptive compliance method relies on a computerized algorithm that compares lists of diagnosis codes with the diagnosis codes that IRFs report on patients' IRF–PAIs. First, the computer algorithm compares the impairment group codes (IGCs), which represent the primary reason the patient is being treated in the IRF, with the list of IGCs that presumptively meets the 60 percent rule requirements (which can be

downloaded from the IRF PPS Web site at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientRehabFacPPS/Criteria.html*). If the computer algorithm finds a match, then the computer algorithm examines further to determine whether there are any etiologic diagnosis exclusions on the list that match with any etiologic diagnosis codes (ICD–10–CM codes in item #22 of the IRF–PAI). If the IGC on the IRF–PAI matches an IGC that presumptively meets the 60 percent rule requirements, and there are no etiologic diagnosis exclusions (or there are no matches with the etiologic diagnoses on the IRF–PAI), then the case is counted as meeting the requirements. If the IGC on the IRF–PAI matches one of the presumptive IGCs, but there is an etiologic diagnosis exclusion that matches one of the etiologic diagnoses on the IRF–PAI, then the case is not counted as meeting the requirements. If the IGC on the IRF–PAI does not match one of the presumptive IGCs, then the computer algorithm goes a further step to examine the comorbid conditions listed in item #24 on the IRF–PAI. If, in this second step, one or more comorbid conditions listed in item #24 match one of the ICD–10–CM diagnosis codes (or code combinations) listed on the presumptive compliance list (which can also be downloaded from the IRF PPS Web site at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientRehabFacPPS/Criteria.html*), then the case is counted as presumptively meeting the 60 percent rule requirements. Otherwise, the case is not counted as meeting the requirements.

2. Medical Review Method

The medical review method of determining an IRF's compliance with the 60 percent rule requirements must be used if the IRF's Medicare FFS and MA population makes up less than 50 percent of its total patient population, or for some reason the MAC is unable to generate a valid compliance percentage for the IRF using the presumptive compliance method, or the IRF fails to meet the 60 percent rule requirements using the presumptive compliance method. However, the MAC is always permitted to use the medical review method for an IRF if the MAC determines that this method will result in the most accurate portrayal of the IRF's compliance with the 60 percent rule requirements.

Under the medical review method, the MAC takes a statistically valid random sample of an IRF's claims for the 12-month compliance review period, and requests the complete medical records for this sample of claims from the IRF. The MAC then reviews this sample of medical records to determine whether the IRF is in compliance with the 60 percent rule requirements.

Thus, if an IRF fails to meet the requirements according to the presumptive compliance method, the MAC must always perform the medical review method to determine whether the IRF has met the requirements. An IRF cannot fail to meet the requirements based solely on the outcome of the presumptive compliance method.

C. Background on the Use of ICD–10–CM Diagnosis Codes in the Presumptive Compliance Method

We developed the presumptive compliance method to simplify the process of determining whether an IRF meets the 60 percent rule requirements. By using a computerized algorithm that looks for diagnosis codes on the IRF–PAI and attempts to match them to diagnosis codes on the lists of codes that presumptively meet the requirements, the presumptive compliance method can be performed quickly and efficiently. However, in order to accurately reflect whether an IRF meets the 60 percent rule requirements using the presumptive compliance method, we must ensure that the lists of diagnosis codes (IGCs, etiologic diagnosis exclusions, and comorbid condition codes) that are used in the presumptive compliance method are accurate and updated. That is, we must ensure that each code used in the presumptive compliance method, if applicable to a given patient, would more than likely mean that the patient required intensive rehabilitation services in an IRF for treatment of one or more of the conditions specified at § 412.29(b)(2) or that they had a comorbidity that caused significant decline in functional ability such that, even in the absence of the admitting condition, the patient would require the intensive rehabilitation treatment.

To ensure that the diagnosis codes used in the presumptive compliance method were accurately reflecting this, in the FY 2014 IRF PPS final rule (78 FR 47860, 47879 through 47895), we implemented the first updates and revisions in nearly a decade to the list of International Classification of Diseases, 9th Revision, Clinical Modification (ICD–9–CM) codes then used in determining presumptive compliance with the 60 percent rule when we revised the Presumptive Methodology list (then, ''ICD–9–CM Codes That Meet Presumptive Compliance Criteria''). At the time, our examination found that changes over time (including changes in the use of the individual codes, changes in clinical practice, changes in the frequency of various types of illness and disability, and changes to the application of 60 percent rule itself) supported our updating the diagnosis codes that are deemed appropriate to count toward a facility's 60 percent rule compliance calculation. Such updates ensured that the codes better reflected the regulations at § 412.29(b). We performed a clinical analysis of the ICD–9–CM Presumptive Methodology code list to determine the clinical appropriateness of each individual ICD–9–CM code's inclusion on the list, and a statistical analysis of the ICD–9–CM diagnoses code list to enhance our understanding of how individual ICD–9–CM codes were being used by IRFs. For example, one revision we made was to remove non-specific codes where we believed more specific codes were available for coding. These changes were in line with our overall goal to encourage more specific coding on the IRF–PAI.

As a follow up to the revisions we implemented in the FY 2014 IRF PPS final rule, in the FY 2015 IRF PPS final rule (79 FR 45872, 45896 through 45900), we revised the ICD–9–CM diagnosis codes on the ''IGCs That Meet Presumptive Compliance Criteria'' list. An ''impairment group code'' is not an ICD diagnosis code, but part of a separate unique set of codes specifically developed for the IRF PPS for assigning the primary reason for admission to an IRF. Our objective in revising the list was to make conforming changes to the IGC list that we had made to the Presumptive Methodology list in the FY 2014 IRF PPS final rule. We also revised the diagnosis codes listed as exclusions on the ''IGCs That Meet Presumptive Compliance Criteria'' list. In the IRF PPS, we exclude these diagnosis codes from counting if they are the patient's Etiologic Diagnosis (that is, the etiologic problem that led to the condition for which the patient is receiving rehabilitation). That is, a given IGC that would otherwise meet the presumptive compliance criteria will not meet such criteria if the patient has one of the ''excluded'' Etiologic Diagnoses for that IGC.

In the FY 2015 IRF PPS final rule (79 FR 45872, 45905 through 45908), we also finalized our translation of the diagnosis code lists from ICD–9–CM to ICD–10–CM, effective for use when ICD–10 would become the required medical code data set for use on Medicare claims and IRF–PAI submissions (which occurred on October 1, 2015). As discussed in that

rule, we translated the ICD–9–CM code lists used in the IRF PPS presumptive compliance methodology into ICD–10–CM using the General Equivalence Mappings (GEMs) tool. Our intension was to perform a straightforward translation of these codes from ICD–9–CM to ICD–10–CM using the GEMs tool. That is, we made no policy or clinical analysis of the codes under their ICD–10–CM code definition or label, but merely registered the ICD–10 diagnosis codes generated through the GEMS tool. Our intention in converting the ICD–9–CM diagnosis codes to ICD–10–CM diagnosis codes was for the converted codes to reflect the same ''meaning'' as the original codes. That is, we did not intend to add conditions to, or delete conditions from, the ICD–9–CM codes used in the IRF PPS at that time.

To ensure a smooth transition from the use of ICD–9–CM diagnosis codes to ICD–10–CM codes for the IRF PPS and to allow for public comment on these lists, we proposed and posted to the CMS Web site the resulting ICD–10–CM lists. After carefully considering the comments that we received on our proposed translation of the ICD–9–CM code lists into ICD–10–CM using the GEMs tool, we finalized the ICD–10–CM lists in the FY 2015 IRF PPS final rule. The current ICD–10–CM lists are available for download from the CMS Web site at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientRehabFacPPS/Downloads/ICD-10-CM-DataFiles.zip.*

We stated in the FY 2014 and FY 2015 final rules that, after the adoption of the ICD–10 medical code set, we would review the lists in ICD–10 (once we had enough ICD–10 data available) and make any necessary changes to the lists.

D. Proposed Changes to the Presumptive Methodology Diagnosis Code List

Over the past year, we have performed a comprehensive analysis of the presumptive methodology diagnosis code lists in ICD–10–CM. Overall, our analysis shows that the process we implemented for updating, revising, and converting the ICD–9–CM diagnosis codes to ICD–10–CM (in the FY 2014 and FY 2015 final rules) worked as intended. However, our analysis indicates that there are areas for improvement. Though we did not propose any specific proposals for changes to ICD–10–CM or the presumptive compliance criteria in the FY 2017 IRF PPS proposed rule (81 FR 24178), we received several miscellaneous public comments on the ICD–10–CM diagnosis codes some of which we summarized in the FY 2017 IRF PPS final rule (81 FR 52132). Our analysis and the public comments show the following areas for improvement:

- Issues with ICD–10–CM diagnosis codes that were added to the list of IGC exclusions through the ICD–9–CM to ICD–10–CM conversion process for patients with traumatic brain injury conditions and hip fracture conditions.
- Issues with identification of major multiple trauma codes that did not translate exactly from ICD–9–CM to ICD–10–CM.
- Issues with certain non-specific and arthritis diagnosis codes that were re-introduced back onto the lists through the ICD–10–CM conversion process.
- One ICD–10–CM code, G72.89—Other specified myopathies, that we believe is being inappropriately applied.

Thus, to ensure that the ICD–10–CM diagnosis code lists reflect as accurately as possible the relevant conditions that we believe should count presumptively toward the 60 percent rule, we are proposing to revise the codes on the list. The complete revised lists are posted on the IRF PPS Web site at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientRehabFacPPS/Downloads/ICD-10-CM-DataFiles.zip.* The proposed revisions discussed below are designed to maximize the extent to which the presumptive methodology is in alignment with the 60 percent rule in § 412.29(b), the policies that we finalized in the FY 2014 and FY 2015 IRF PPS final rules (78 FR 47860 and 79 FR 45872, respectively), and the ICD–10–CM coding guidelines, ''ICD–10–CM Official Guidelines for Coding and Reporting.'' CMS and the National Center for Health Statistics (NCHS), provide the guidelines for coding and reporting using ICD–10–CM. The current ICD–10–CM coding guidelines are located on the CMS Web site at *https://www.cms.gov/medicare/coding/icd10/2017-icd-10-cm-and-gems.html.*

E. Proposed Revisions Involving Traumatic Brain Injury and Hip Fracture Codes

Our comprehensive review of the ICD–10–CM code lists for the presumptive methodology showed that excluded diagnosis codes listed in two IGC categories were affected by the ICD–10–CM translation: Traumatic brain injury (TBI) and hip fracture(s).

The excluded diagnosis codes on the IGC list fall into the following IGC categories:

- Brain Dysfunction—0002.21 Traumatic, Open Injury
- Brain Dysfunction—0002.22 Traumatic, Closed Injury
- Orthopedic Disorders—0008.11 Status Post Unilateral Hip Fracture
- Orthopedic Disorders—0008.12 Status Post Bilateral Hip Fractures

1. Traumatic Brain Injury Code Exclusions on the IGC List

We used the GEMs tool, purely to translate the ICD–9–CM diagnosis codes used in the presumptive compliance methodology lists to ICD–10–CM diagnosis code lists. We intended the breadth of conditions covered in the former would be equivalent to the latter. However, under ICD–10–CM, the code labels for certain etiologic diagnoses for traumatic brain injuries changed from the meaning of the diagnosis codes for traumatic brain injuries under ICD–9–CM. Thus, for this proposed rule, we analyzed the ICD–10–CM traumatic brain injury diagnosis codes listed as exclusions on the IGC list based on the ICD–10–CM code labels (diagnosis descriptions). Based on this analysis, we propose to remove some of the traumatic brain injury codes listed as exclusions on the IGC list (that is, if listed as an Etiologic Diagnosis on the IRF–PAI, these diagnosis codes would count toward the presumptive compliance criteria). However, we propose to retain exclusion of ''IGC Brain Dysfunction—0002.22 Traumatic, Closed Injury we have retained S06.9X9A—Unspecified intracranial injury with loss of consciousness of unspecified duration, initial encounter,'' as part of an excluded combination diagnosis code (meaning that one code contains more than one diagnosis) because we believe other, more specific codes are available on the presumptive compliance list that would be more appropriate for coding conditions suitable for inclusion in the presumptive compliance count for a facility.

2. Hip Fracture(s) Code Exclusions on the IGC List

In the FY 2014 IRF PPS final rule (78 FR 47860, 47894), we removed ICD–9–CM diagnosis codes 820.8—Closed fracture of unspecified part of neck of femur, and 820.9—Open fracture of unspecified part of neck of femur, from the ICD–9–CM Codes That Meet Presumptive Compliance Criteria list. In the FY 2015 IRF PPS final rule (79 FR 45872, 45897), we excluded these diagnosis codes from counting if they are the patient's Etiologic Diagnosis (that is, the etiologic problem that led to the condition for which the patient is receiving rehabilitation) under IGC 0008.11—Orthopedic Disorders-Status Post Unilateral Hip Fracture, and IGC 0008.12—Orthopedic Disorders-Status Post Bilateral Hip Fractures. Also, in the FY 2015 IRF PPS final rule (79 FR

45872, 458905 through 45908), we adopted the ICD–10 medical code set for the IRF PPS, in which we translated these ICD–9–CM diagnosis codes to ICD–10–CM diagnosis codes.

For this proposed rule, we reviewed the IGC ICD–10–CM diagnosis code exclusions under IGC 0008.11 and IGC 0008.12. After a thorough review of the codes listed as exclusions under these IGCs, we are proposing to remove some of the exclusion codes for these two IGCs, to allow them to count under the presumptive compliance methodology. In the FY 2014 IRF PPS final rule (78 FR 47860, 47885), we agreed with commenters that treatment for a femoral neck fracture is the same regardless of the level of the fracture line within the capsule of the hip or the trochanteric region. During the ICD–10–CM conversion, some hip fracture codes were inadvertently added as exclusions to IGC 0008.11—Orthopedic Disorders-Status Post Unilateral Hip Fracture, and IGC 0008.12—Orthopedic Disorders-Status Post Bilateral Hip Fractures. Consistent with our decision described in the FY 2014 IRF PPS final rule, we are proposing to remove the diagnosis code exclusions for a fracture of ''*unspecified* part of neck of femur.'' However, we are proposing to retain the diagnosis code exclusions with the code label, ''fracture of unspecified part of neck of femur of *unspecified femur*.'' That is, we believe that documentation should support which femur (left/right or bilateral) is injured.

We invite public comment on our proposed revisions involving TBI and hip fracture codes.

F. Proposed Revisions Regarding Major Multiple Trauma Codes

Under ICD–9–CM, diagnosis codes 828.0—Closed multiple fractures involving both lower limbs, lower with upper limb, and lower limb(s) with rib(s) and sternum, and 828.1—Open multiple fractures involving both lower limbs, lower with upper limb, and lower limb(s) with rib(s) and sternum, would count a case as meeting the 60 percent rule requirements under the presumptive compliance method. However, similar codes do not exist in ICD–10–CM. The GEMs tool translates these ICD–9–CM codes to the ICD–10–CM code of T07—Unspecified multiple injuries. IRF providers have communicated to CMS their understanding that they would be violating *ICD–10–CM Official Guidelines for Coding and Reporting* if they were to use code T07 for patients with multiple fractures, unless they truly do not know where any of the patient's fractures are located. The IRFs stated that *ICD–10–CM Official Guidelines for Coding and Reporting* indicates that codes for specific bones fractured should be reported. As such, providers state that they no longer are able to code for these patients in a manner that allows them to count under presumptive compliance. The ICD–10–CM Official Guidelines for Coding and Reporting is located on the CMS Web site at *https://www.cms.gov/medicare/coding/icd10/2017-icd-10-cm-and-gems.html.*

Under the IRF PPS, the GEMs translation provides the following ICD–10–CM combination codes as eligible codes for multiple trauma cases:

S42.90XA A Fracture of unspecified shoulder girdle, part unspecified, initial encounter for closed fracture
S52.90XA A Unspecified fracture of unspecified forearm, initial encounter for closed fracture
S22.20XA B Unspecified fracture of sternum, initial encounter for closed fracture
S22.49XA C Multiple fractures of ribs, unspecified side, initial encounter for closed fracture
S42.91XA A Fracture of right shoulder girdle, part unspecified, initial encounter for closed fracture
S52.91XA A Unspecified fracture of right forearm, initial encounter for closed fracture
S42.92XA B Fracture of left shoulder girdle, part unspecified, initial encounter for closed fracture
S52.92XA B Unspecified fracture of left forearm, initial encounter for closed fracture

However, it is noted that unlike ICD–9–CM codes 828.0—Closed multiple fractures involving both lower limbs, lower with upper limb, and lower limb(s) with rib(s) and sternum, and 828.1—Open multiple fractures involving both lower limbs, lower with upper limb, and lower limb(s) with rib(s) and sternum, the IRF PPS ICD–10–CM translation provided no codes for the lower extremities as part of multiple fractures.

So that IRFs may appropriately count patients with multiple fractures that include lower extremity fractures under the presumptive methodology, we propose to count IRF–PAIs that contain 2 or more of the ICD–10–CM codes from the three major multiple trauma lists (in the specified code combinations) that are located on the CMS Web site at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientRehabFacPPS/Downloads/ICD-10-CM-DataFiles.zip.* These codes would need to be specifically combined so that (a) at least one lower extremity fracture is combined with an upper extremity fracture and/or a rib/sternum fracture or (b) fractures are present in both lower extremities.

In order for patients with multiple fractures to qualify as meeting the 60 percent rule requirement for IRFs under the presumptive methodology, the following codes could be used if combined as described above:

- List A: Major Multiple Trauma—Lower Extremity Fracture
- List B: Major Multiple Trauma—Upper Extremity Fracture
- List C: Major Multiple Trauma—Ribs and Sternum Fracture

We also propose to remove ICD–10–CM diagnosis code T07—Unspecified multiple injuries from the presumptive methodology list and replace it with codes from the three major multiple trauma lists (in the specified code combinations), as described above. We believe that any patient who suffered multiple trauma and subsequently required admission into an IRF would have experienced an extensive medical examination to identify the scope of his or her injuries in the acute care setting. After a review of the acute care medical record, these injuries would be known to both the IRF pre-admission personnel and the admitting IRF physician, and would be able to be coded from the medical record in the most specific manner possible in the IRF setting.

We invite public comment on our proposed revisions to the presumptive methodology list for major multiple trauma.

G. Proposed Removal of Unspecified Codes and Arthritis Codes

1. Unspecified Codes

In the FY 2014 IRF PPS final rule (78 FR 47860, 47884 through 47885), we stated that we believe that highly descriptive coding provides the best and clearest way to document the appropriateness of a given patient's admission and would improve the accuracy of the presumptive compliance method of calculating a facility's 60 percent rule compliance percentage. Thus, whenever possible, we believe that the most specific code that describes a medical disease, condition, or injury should be used to document diagnoses on the IRF–PAI. As we stated in that final rule, generally, ''unspecified'' codes are used when there is a lack of information about location or severity of medical conditions in the medical record. We believe that specific diagnosis codes that narrowly identify anatomical sites where disease, injury, or condition exist should be used when coding patients' conditions on the IRF–PAI whenever such codes are available. Moreover, we

believe that imprecise codes would inappropriately categorize an overly broad segment of the patient population as having the conditions required for inclusion in a facility's presumptive compliance calculation, which would result in an inflated compliance percentage. If the IRF does not have enough information about the patient's condition to code the more specific codes on the IRF–PAI, we would expect the IRF to seek out and document additional information from the patient's acute care hospital to determine and submit the appropriate, more specific code(s) to use.

In this proposed rule, we used the same approach in analyzing the ICD–10–CM diagnosis codes that we used in our analysis of ICD–9–CM diagnosis codes in the FY 2014 IRF PPS final rule. That is, we went through each ICD–10–CM code currently on the presumptive compliance methodology lists individually to determine whether the ICD–10–CM code is sufficiently specific to reliably identify a subset of conditions suitable for inclusion in the presumptive methodology compliance calculation. If we determined that a given ICD–10–CM code was not sufficiently specific, we ascertained whether more specific codes were available for use (that could count for the presumptive compliance methodology) to identify those members of the patient population with conditions that we believe it would be appropriate to include in the presumptive methodology compliance calculation. For example, we would likely determine that an injury to an unspecified part of the body would not be sufficiently specific, but we sought to identify where there were codes available (that could count for the presumptive compliance methodology) to code that injury for specific locations on the body. Now, in light of our findings and consistent with our rationale for removing codes in the FY 2014 IRF PPS final rule (78 FR 47860, 47884 through 47885), we propose to remove certain unspecified diagnosis codes that, on review, we believe are inappropriate to include in the Presumptive Compliance list. These codes are listed on the CMS IRF PPS Web site at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientRehabFacPPS/Downloads/ICD-10-CM-DataFiles.zip.*

If finalized, we believe that ICD–10–CM codes that provide more specific information to describe medical disease, condition, or injury would remain available on the presumptive compliance list that facilities could use to code cases that should be included in their facility's presumptive compliance percentage compliance count. For example, we propose to remove the diagnosis code T22.559S—Corrosion of first degree of unspecified shoulder, sequela. However, we propose that T22.551S—Corrosion of the first degree of right shoulder, sequela and T22.552S—Corrosion of first degree of left shoulder, sequela remain on the Presumptive List. We believe documentation of anatomic location of injury should be readily available in the medical record and that this information should be used to appropriately code claims in the facility's presumptive methodology percentage using the IRF–PAI.

2. Arthritis Codes

In the FY 2014 IRF PPS final rule (78 FR 47887 through 47895), we finalized the removal of ICD–9–CM diagnosis codes for arthritis conditions from the from the ICD–9–CM Codes That Meet Presumptive Compliance Criteria list because the inclusion of patients with these medical conditions in the presumptive compliance calculation of the IRF's compliance percentage is conditioned on those patients meeting the described severity and prior treatment requirements. The ICD–9–CM diagnosis codes that reflected these arthritis and arthropathy conditions did not provide any information about the severity of the condition or whether the prior treatment requirements were met. Therefore, we stated in the FY 2014 IRF PPS final rule (78 FR 47888) that we believe that additional information beyond the presence of the code is necessary to determine if the medical record would support inclusion of individuals with the arthritis and arthropathy conditions outlined in our regulations under § 412.29(b)(2)(x) through (xii) in the presumptive compliance calculation of the facility's compliance percentage. For this reason, we finalized the removal of the ICD–9–CM diagnosis codes associated with the medical conditions outlined under § 412.29(b)(2)(x) through (xii) from the list of ICD–9–CM Codes That Meet Presumptive Compliance Criteria list.

Though we removed arthritis diagnosis codes from the ICD–9–CM Codes That Meet Presumptive Compliance Criteria list prior to the ICD–9–CM to ICD–10–CM conversion process, some ICD–10–CM arthritis codes are listed due to the straight translation. However, in analyzing the ICD–10–CM diagnosis codes for this proposed rule and consistent with our FY 2014 IRF PPS final rule rationale for removing ICD–9–CM arthritis diagnosis codes from the ICD–9–CM Codes That Meet Presumptive Compliance Criteria list, we propose to remove 15 ICD–10–CM diagnosis codes related to ''rheumatoid polyneuropathy with rheumatoid arthritis.''

We welcome public comments on our proposed removal of the unspecified codes and arthritis codes that were re-introduced back onto the lists through the ICD–10–CM conversion process.

H. Proposed Removal of ICD–10–CM Code G72.89—Other Specified Myopathies

Through our monitoring of IRFs' use of the ICD–10–CM codes that currently count toward a facility's compliance percentage under the presumptive compliance method, we have discovered what we believe to be inconsistent use of one ICD–10–CM code (G72.89—Other Specified Myopathies) among IRFs. We included this ICD–10–CM code on the presumptive compliance code list based on our understanding that it is intended to represent a relatively narrow set of specified myopathies that are confirmed by the results of specific medical testing and identified as such in the patients' medical records. However, having reviewed certain IRFs' disproportionately higher use of the code, we have found that some IRFs are using this code more broadly, including to represent patients with generalized weakness who do not meet the requirements in the 60 percent rule under § 412.29(b)(2).

Therefore, to avoid the improper inclusion of cases that do not meet the requirements in the 60 percent rule under § 412.29(b) in IRFs' presumptive compliance, we are proposing to remove G72.89—Other Specified Myopathies from the presumptive compliance list. If finalized, IRFs would not be able to use this code to meet the 60 percent rule requirements using the presumptive compliance methodology, but patients with other specified myopathies that can be verified through a review of the patient's medical record would continue to count toward an IRF's compliance percentage using the medical review method.

We welcome public comment on our proposal to remove ICD–10–CM code G72.89—Other specified myopathies from the presumptive compliance list.

Again, the proposed revised ICD–10–CM Presumptive List and the proposed revised IGCs That Meet Presumptive Compliance Criteria list are available for download from the CMS Web site at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientRehabFacPPS/Downloads/ICD-10-CM-DataFiles.zip.*

I. Solicitation of Comments Regarding the Criteria Used To Classify Facilities for Payment Under the IRF PPS

Sections 1886(d)(1)(B) and 1886(d)(1)(B)(ii) of the Act give the Secretary discretion in defining a ''rehabilitation unit'' and a ''rehabilitation hospital'' for payment under the IRF PPS. In 1983, when Congress first authorized the Secretary to define IRFs for purposes of excluding them from the inpatient prospective payment system (IPPS), we used some of the accreditation requirements that were used by the Joint Commission on Accreditation of Hospitals (which is now known as the Joint Commission) and other accrediting organizations to develop our definition of a rehabilitation hospital. We also used other criteria that we believed distinguished rehabilitation hospitals from other types of hospitals, including the requirement that the hospital must be primarily engaged in furnishing intensive rehabilitation services as demonstrated by patient medical records showing that, during the hospital's most recently completed 12-month cost reporting period, at least 75 percent of the hospital's inpatients were treated for one or more conditions specified in these regulations that typically require intensive inpatient rehabilitation. (48 FR 39756). We included this requirement, commonly referred to as the 75 percent rule, as a defining feature of a rehabilitation hospital because we believed that examining the types of conditions for which the hospital's inpatients are treated, and the proportion of patients treated for conditions that typically require intensive inpatient rehabilitation, will help distinguish those hospitals in which the provisions of rehabilitation services is a primary, rather than a secondary, goal. (48 FR 39756).

The original list of medical conditions used in evaluating this requirement were stroke, spinal cord injury, congenital deformity, amputation, major multiple trauma, fracture of femur (hip fracture), brain injury, and polyarthritis, including rheumatoid arthritis. This list of 8 medical conditions was partly based on the information contained in a document entitled, ''Sample Screening Criteria for Review of Admissions to Comprehensive Medical Rehabilitation Hospitals/Units,'' produced by the American Academy of Physical Medicine and Rehabilitation and the American Congress of Rehabilitation Medicine. On January 3, 1984, we published a final rule entitled ''Medicare Program: Prospective Payment for Medicare Inpatient Hospital Services'' (49 FR 234), that expanded the initial list of conditions to include neurological disorders (including multiple sclerosis, motor neuron diseases, polyneuropathy, muscular dystrophy, and Parkinson's disease) and burns, in response to public comment.

In the FY 2004 IRF PPS proposed rule, we provided additional background on how the definition of an IRF developed and evolved over time. In that proposed rule, we also discussed the need to use these requirements in distinguishing IRFs from other types of inpatient facilities and thereby maintaining compliance with sections 1886(d)(1)(B) and 1886(d)(1)(B)(ii) of the Act. In addition, we stated that making this distinction is also critical to fulfilling the requirements of section 1886(j)(1)(A), which requires Medicare to make payments to IRFs under a PPS specifically designed for the services they furnish.

In the May 7, 2004 final rule, we updated the list of conditions used to evaluate compliance with the ''75 percent rule'' from 10 conditions to 13, and implemented a new presumptive compliance methodology, as discussed previously in this proposed rule, to simplify the rule and to promote more consistent enforcement. The list of 13 conditions that were developed in the May 7, 2004 final rule, which is still the list that we use to evaluate compliance with the rule, can be found in § 412.29(b)(2):

- Stroke.
- Spinal cord injury.
- Congenital deformity.
- Amputation.
- Major multiple trauma.
- Fracture of femur (hip fracture).
- Brain injury.
- Neurological disorders, including multiple sclerosis, motor neuron diseases, polyneuropathy, muscular dystrophy, and Parkinson's disease.
- Burns.
- Active, polyarticular rheumatoid arthritis, psoriatic arthritis, and seronegative arthropathies, under specified conditions (see § 412.29(b)(2)(x)).
- Systemic vasculidities with joint inflammation, under specified conditions (see § 412.29(b)(2)(xi)).
- Severe or advanced osteoarthritis (osteoarthritis or degenerative joint disease), under specified conditions (see § 412.29(b)(2)(xii)).
- Knee or hip joint replacement, or both, if the replacements are bilateral, if the patient is age 85 or older, or if the patient have a body mass index (BMI) of at least 50.

Subsequent to the May 7, 2004 final rule, on June 16, 2005, the Government Accountability Office (GAO) issued a report entitled, ''More Specific Criteria Needed to Classify Inpatient Rehabilitation Facilities,'' which recommended that CMS describe more thoroughly the subgroups of patients within a condition that require IRF services, possibly using functional status or other factors in addition to condition. In this report, the GAO did not recommend that more conditions be added to the list of conditions in § 412.29(b)(2), in part because the experts convened for this study could not agree on conditions to add and in part because the GAO said that it believed that the rule should instead be ''refined to clarify which types of patients should be in IRFs as opposed to another setting.''

In addition, in September 2009, we issued a Report to Congress entitled ''Analysis of the Classification Criteria for Inpatient Rehabilitation Facilities.'' This report was required by section 115 of MMSEA, which also required the IRF compliance rate to be set no higher than 60 percent and required comorbidities to continue to be included in the compliance rate calculation. In conducting the analysis for this report, the contractor (Research Triangle Institute International (RTI)) solicited public comments and held a technical expert panel (TEP) to analyze the effects of, and potential refinements to, the 60 percent rule and the list of conditions that are used to evaluate compliance with the 60 percent rule. The report generally concluded the following:

- In considering changes to the 60 percent rule, CMS should establish policies that ensure the availability of IRF services to beneficiaries whose intensive rehabilitation needs cannot be adequately served in other settings.
- CMS should ensure that criteria for IRF classification focus on the intensity of service needs that justify the higher IRF payment rate.
- An IRF stay is not needed for all patients having a rehabilitation-type diagnosis.
- Patient characteristics, such as medical comorbidities, prognosis for improvement and cognitive deficits, are important to consider when identifying appropriate IRF patients.

Thus, to assist us in generating ideas and information for analyzing refinements and updates to the criteria used to classify facilities for payment under the IRF PPS, we are specifically soliciting public comments from stakeholders on the 60 percent rule, including but not limited to, the list of conditions in § 412.29(b)(2).

X. Proposed Subregulatory Process for Certain Updates to Presumptive Methodology Diagnosis Code Lists

We have not established a formal process for updating the code lists used for the presumptive compliance methodology to account for changes to the ICD–10 medical code data set or to alert providers to the effects of these changes on the presumptive methodology code lists. In this proposed rule, we propose to establish such a formal process, to distinguish between non-substantive updates to the ICD–10–CM codes on the lists that would be applied through a sub-regulatory process and substantive revisions to the ICD–10–CM codes on the lists that would only be proposed and finalized through notice and comment rulemaking.

In this proposed rule, we are proposing to establish a formal process of updating the lists of ICD–10–CM codes used in the presumptive compliance methodology using a subregulatory process to apply non-substantive changes to the lists of ICD–10–CM codes used in the presumptive compliance methodology in accordance with changes to the ICD–10 medical data codes set that are implemented annually by the ICD–10 Coordination and Maintenance Committee (information about the ICD–10 Coordination and Maintenance Committee can be found at *https://www.cdc.gov/nchs/icd/icd10_maintenance.htm*). We would continue our practice of using notice-and-comment rulemaking to propose and finalize substantive changes to the lists of ICD–10–CM codes used in the presumptive methodology.

The ICD–10 Coordination and Maintenance Committee is a federal interdepartmental committee that is chaired by representatives from the NCHS and by representatives from CMS. The committee typically meets bi-annually, and publishes updates to the ICD–10 medical code data sets in June of each year, which become effective October 1 of each year. Note that the ICD–10 Coordination and Maintenance Committee has the ability to make changes to the ICD–10 medical code data sets effective on April 1, but has not yet done so. In accordance with 45 CFR part 162, subpart J, we require Medicare providers to use the most current ICD–10 medical code data set in coding Medicare claims and IRF–PAIs.

To ensure that the lists of ICD–10–CM codes used in the presumptive compliance methodology are updated in accordance with changes to the ICD–10 medical code data set, we propose to obtain the list of changes to the ICD–10 medical code data set from the ICD–10 Coordination and Maintenance Committee (at *https://www.cdc.gov/nchs/icd/icd10_maintenance.htm*) and, through a subregulatory process, apply all relevant changes to the lists of codes used in the presumptive compliance methodology. Any such changes would be limited to those specific changes that are necessary to maintain consistency with the most current ICD–10 medical code data set, which Medicare providers are generally required to use in accordance with 45 CFR part 162, subpart J. Our intent in applying these changes through the proposed subregulatory process would be to keep the same conditions on the presumptive methodology lists, but ensure that the codes used to identify those conditions are synchronized with the most current ICD–10 medical code data set.

We propose to publish the updated lists of codes on the IRF PPS Web site at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientRehabFacPPS/Criteria.html* before the effective date for these changes so that IRFs will be able to use the most current ICD–10 medical code data set to appropriately count cases toward meeting the 60 percent rule requirements under the presumptive compliance methodology.

For example, ICD–10–CM code M50.02—Cervical disc disorder with myelopathy, mid-cervical region—is one of the ICD–10–CM codes on the presumptive compliance methodology list that ''counts'' a patient as meeting the 60 percent rule requirements if the patient is coded with this diagnosis code. However, effective October 1, 2016, the ICD–10 Coordination and Maintenance Committee made M50.02 an ''invalid'' code, meaning that this code is no longer available for use within the ICD–10 medical code data set. In place of this code, the ICD–10 Coordination and Maintenance Committee added:

- M50.020—Cervical disc disorder with myelopathy, mid-cervical region, unspecified level (new code),
- M50.021—Cervical disc disorder at C4–C5 level with myelopathy (new code)
- M50.022—Cervical disc disorder at C5–C6 level with myelopathy (new code)
- M50.023—Cervical disc disorder at C6–C7 level with myelopathy (new code)

As we did not have a process for updating the ICD–10–CM codes in the presumptive compliance methodology prior to October 1, 2016, we were unable to reflect this change in the presumptive compliance methodology and therefore only counted patients that had M50.02 on their IRF–PAI submission and were not able to recognize codes M50.020, M50.021, M50.022, or M50.023 in the presumptive compliance methodology. Thus, an IRF that adopted the changes to the ICD–10 medical code data set on October 1, 2016, as required, and coded a patient with, for example, M5.023, would not have that patient counted as meeting the 60 percent rule requirements under the presumptive compliance methodology (unless the patient happened to have another ICD–10–CM code that would have counted under the presumptive compliance methodology). The update process that we are proposing in this proposed rule would enable us to remove the invalid code M50.02 and add the new codes M50.020, M50.021, M50.022, and M50.023 to the lists of codes used in the presumptive compliance methodology prior to the effective date of the change (October 1, 2016) so that an IRF's appropriate use of the newly added code M50.023 would allow the patient to count as meeting the 60 percent rule requirements.

We note that, in the example above, we would not make any policy judgments in adopting the changes to the ICD–10 medical code data set through subregulatory means. Whether or not we believed, for example, that M50.020 might be too non-specific to include in the presumptive compliance methodology, we would nevertheless add it through this subregulatory process because we would treat M50.020, M50.021, M50.022, and M50.023 exactly the same as the M50.02 code that they replaced. We would simply replace the invalid code with the four new valid codes. If, hypothetically speaking, we were to decide at a later date that M50.020 is too non-specific and would therefore want to remove it from the presumptive compliance lists, we would consider that to be a substantive change that would necessitate notice and comment rulemaking. Any substantive changes to the lists of codes used in the presumptive compliance methodology would be promulgated through notice and comment rulemaking.

In the FY 2007 IRF PPS final rule (71 FR 48354 at 48360 through 48361), we implemented the same subregulatory updating process for the IRF tier comorbidities list (also a list of ICD–10–CM codes) that we are proposing to implement for the lists of ICD–10–CM codes used in the presumptive compliance methodology. As we

discussed in that final rule, we believe that the best way for us to convey information about changes to the ICD–10 medical code data set that affect the presumptive compliance lists and alert providers to non-substantive program changes that result is to update the lists using a subregulatory process and make the documents containing the program's lists of ICD–10–CM codes web-based, rather than publishing each non-substantive change to the ICD–10–CM codes in regulation. We believe that this would ensure providers have the most up-to-date information possible for their 60 percent compliance purposes. Therefore, we are proposing that each year's updated lists of ICD–10–CM codes for presumptive compliance methodology will be available on the IRF PPS Web site (located at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientRehabFacPPS/Data-Files.html*) prior to the effective date of the changes to the ICD–10 medical code data set.

The current proposed presumptive compliance lists are available for download from the IRF PPS Web site *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientRehabFacPPS/Data-Files.html*) prior to the effective date of the changes to the ICD–10 medical code data set.

The current proposed presumptive compliance lists are available for download from the IRF PPS Web site at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientRehabFacPPS/Downloads/ICD-10-CM-DataFiles.zip.* These lists reflect the proposed substantive revisions outlined in this proposed rule, as well as adoption of the ICD–10 Coordination and Maintenance Committee's draft changes to the ICD–10 medical code data sets, effective October 1, 2017. The version of these lists that is finalized in conjunction with the FY 2018 IRF PPS final rule will constitute the baseline for any future updates to the presumptive methodology lists.

We invite public comment on the proposed subregulatory process for certain updates to the presumptive methodology ICD–10–CM code lists.

XI. Proposed Use of IRF–PAI Data To Determine Patient Body Mass Index (BMI) Greater Than 50 for Cases of Lower Extremity Single Joint Replacement

Previously, we had no information from the IRF–PAI that we could use to calculate the BMI for patients. Thus, we were not able to count lower-extremity joint replacement patients with BMI greater than 50 as meeting the 60 percent rule requirements using the presumptive compliance methodology. We could only identify these specific patients using the medical review methodology.

In the FY 2014 IRF PPS final rule (78 FR 47860, 47896 and 47899), we added Item 25A—Height and Item 26A—Weight to the IRF–PAI. This information can be used to calculate BMI and thereby provides the data necessary to presumptively identify and count lower extremity single joint replacement cases with a BMI greater than 50 in an IRF's 60 percent rule compliance percentage. In this proposed rule, we propose to use the information recorded for Item 25A—Height and Item 26A—Weight on the IRF–PAI in the calculation of a patient BMI greater than 50 and to use that data to determine and presumptively count lower extremity single joint replacement cases toward an IRF's compliance percentage.

We invite public comment on the proposed plan to calculate BMI greater than 50 for cases of lower extremity single joint replacement.

XII. Proposed Revisions and Updates to the IRF Quality Reporting Program (QRP)

A. Background and Statutory Authority

Section 3004(b) of the Affordable Care Act amended section 1886(j) of the Act by adding paragraph (7), requiring the Secretary to establish the IRF QRP. This program applies to freestanding IRFs, as well as IRF units affiliated with either acute care facilities or critical access hospitals. Beginning with the FY 2014 IRF QRP, the Secretary is required to reduce any annual update to the standard federal rate for discharges occurring during such fiscal year by 2 percentage points for any IRF that does not comply with the requirements established by the Secretary. Section 1886(j)(7) of the Act requires that for the FY 2014 IRF QRP, each IRF submit data on quality measures specified by the Secretary in a form and manner, and at a time, specified by the Secretary. For more information on the statutory history of the IRF QRP, please refer to the FY 2015 IRF PPS final rule (79 FR 45908).

Please note that term ''FY [year] IRF QRP'' refers to the fiscal year for which the IRF QRP requirements applicable to that fiscal year must be met for a IRF to receive the full annual update when calculating the payment rates applicable to it for that fiscal year.

The Improving Medicare Post-Acute Care Transformation Act of 2014 (IMPACT Act) amended Title XVIII of the Act, in part, by adding a new section 1899B, entitled ''Standardized Post-Acute Care (PAC) Assessment Data for Quality, Payment and Discharge Planning,'' that enacts new data reporting requirements for certain post-acute care (PAC) providers, including IRFs. Specifically, sections 1899B(a)(1)(A)(ii) and (iii) of the Act require IRFs, long-term care hospitals (LTCHs), skilled nursing facilities (SNFs) and home health agencies (HHAs), under their respective quality reporting program (which, for IRFs, is found at section 1886(m)(7)), to report data on quality measures specified under section 1899B(c)(1), which in turn requires that the measures cover at least five domains, and data on resource use and other measures specified under section 1899B(d)(1), which in turn requires that the measures cover at least three domains. Section 1899B(a)(1)(A)(i) further requires each of these PAC providers to report under their respective quality reporting program standardized patient assessment data in accordance with section (b), which requires that the data be for at least the quality measures specified under section (c)(1) and that is for five specific categories: Functional status; cognitive function and mental status; special services, treatments, and interventions; medical conditions and co-morbidities; and impairments. All of the data that must be reported in accordance with section 1899B(a)(1)(A) must be standardized and interoperable so as to allow for the exchange of the information among PAC providers and other providers and the use of such data in order to enable access to longitudinal information and to facilitate coordinated care. For information on the IMPACT Act, please refer to the FY 2016 IRF PPS final rule (80 FR 47080 through 47083).

B. General Considerations Used for Selection of Quality Measures for the IRF QRP

For a detailed discussion of the considerations we use for the selection of IRF QRP quality measures, such as alignment with the CMS Quality Strategy,[1] which incorporates the three broad aims of the National Quality Strategy,[2] please refer to the FY 2015 IRF PPS final rule (79 FR 45911) and the FY 2016 IRF PPS final rule (80 FR 47083 through 47084).

As part of our consideration for measures for use in the IRF QRP, we review and evaluate measures that have been implemented in other programs

[1] *http://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/QualityInitiativesGenInfo/CMS-Quality-Strategy.html.*

[2] *http://www.ahrq.gov/workingforquality/nqs/nqs2011annlrpt.htm.*

and take into account measures that have been endorsed by NQF for provider settings other than the IRF setting. We have previously adopted measures with the term ''Application of'' in the names of those measures. We have received questions pertaining to the term ''application'' and want to clarify that when we refer to a measure as an ''application of'' the measure, it means that the measure will be used in the IRF setting, rather than the setting for which it was endorsed by the NQF. For example, in the FY 2016 IRF PPS final rule (80 FR 47096 through 47100), we adopted an Application of Percent of Residents Experiencing One or More Falls With Major Injury (Long Stay) (NQF #0674), which is endorsed for the nursing home setting, but not for the IRF setting. For such measures, we intend to seek NQF endorsement for the IRF setting, and if the NQF endorses one or more of them, we will update the title of the measure to remove the reference to ''application.''

1. Accounting for Social Risk Factors in the IRF QRP

We consider related factors that may affect measures in the IRF QRP. We understand that social risk factors such as income, education, race and ethnicity, employment, disability, community resources, and social support (certain factors of which are also sometimes referred to as socioeconomic status (SES) factors or socio-demographic status (SDS) factors) play a major role in health. One of our core objectives is to improve beneficiary outcomes, including reducing health disparities, and we want to ensure that all beneficiaries, including those with social risk factors, receive high quality care. In addition, we seek to ensure that the quality of care furnished by providers and suppliers is assessed as fairly as possible under our programs while ensuring that beneficiaries have adequate access to excellent care.

We have been reviewing reports prepared by the Office of the Assistant Secretary for Planning and Evaluation (ASPE [3]) and the National Academies of Sciences, Engineering, and Medicine on the issue of measuring and accounting for social risk factors in CMS' value-based purchasing and quality reporting programs, and considering options on how to address the issue in these programs. On December 21, 2016, ASPE submitted a Report to Congress on a study it was required to conduct under section 2(d) of the Improving Medicare Post-Acute Care Transformation (IMPACT) Act of 2014. The study analyzed the effects of certain social risk factors of Medicare beneficiaries on quality measures and measures of resource use used in one or more of nine Medicare value-based purchasing programs.[4] The report also included considerations for strategies to account for social risk factors in these programs. In a January 10, 2017 report released by The National Academies of Sciences, Engineering, and Medicine, that body provided various potential methods for measuring and accounting for social risk factors, including stratified public reporting.[5]

As discussed in the FY 2017 IRF PPS final rule, the NQF has undertaken a 2-year trial period in which new measures, measures undergoing maintenance review and measures endorsed with the condition that they enter the trial period can be assessed to determine whether risk adjustment for selected social risk factors is appropriate for these measures. Measures from the IRF QRP are being addressed in this trial. This trial entails temporarily allowing inclusion of social risk factors in the risk-adjustment approach for these measures. At the conclusion of the trial, NQF will issue recommendations on the future inclusion of social risk factors in risk adjustment for quality measures.

As we continue to consider the analyses and recommendations from these reports and await the results of the NQF trial on risk adjustment for quality measures, we are continuing to work with stakeholders in this process. As we previously communicated, we are concerned about holding providers to different standards for the outcomes of their patients with social risk factors because we do not want to mask potential disparities or minimize incentives to improve the outcomes for disadvantaged populations. Keeping this concern in mind, while we sought input on this topic previously, we continue to seek public comment on whether we should account for social risk factors in measures in the IRF QRP, and if so, what method or combination of methods would be most appropriate for accounting for social risk factors. Examples of methods include: Confidential reporting to providers of measure rates stratified by social risk factors, public reporting of stratified measure rates, and potential risk adjustment of a particular measure as appropriate based on data and evidence.

In addition, we are also seeking public comment on which social risk factors might be most appropriate for reporting stratified measure scores and/or potential risk adjustment of a particular measure. Examples of social risk factors include, but are not limited to, dual eligibility/low-income subsidy, race and ethnicity, and geographic area of residence. We are seeking comments on which of these factors, including current data sources where this information would be available, could be used alone or in combination, and whether other data should be collected to better capture the effects of social risk. We will take commenters' input into consideration as we continue to assess the appropriateness and feasibility of accounting for social risk factors in the IRF QRP. We note that any such changes would be proposed through future notice and comment rulemaking.

We look forward to working with stakeholders as we consider the issue of accounting for social risk factors and reducing health disparities in CMS programs. Of note, implementing any of the above methods would be taken into consideration in the context of how this and other CMS programs operate (for example, data submission methods, availability of data, statistical considerations relating to reliability of data calculations, among others), so we also welcome comment on operational considerations. We are committed to ensuring that beneficiaries have access to and receive excellent care, and that the quality of care furnished by providers and suppliers is assessed fairly in CMS programs.

C. Proposed Collection of Standardized Patient Assessment Data Under the IRF QRP

1. Proposed Definition of Standardized Patient Assessment Data

Section 1886(j)(7)(F)(ii) of the Act requires that for fiscal year 2019 and each subsequent year, IRFs report standardized patient assessment data required under section 1899B(b)(1) of the Act. For purposes of meeting this requirement, section 1886(j)(7)(F)(iii) of the Act requires an IRF to submit the standardized patient assessment data required under section 1899B(b)(1) of the Act using the standard instrument in a time, form, and manner specified by the Secretary.

Section 1899B(b)(1)(B) of the Act describes standardized patient assessment data as data required for at

[3] *https://aspe.hhs.gov/pdf-report/report-congress-social-risk-factors-and-performance-under-medicares-value-based-purchasing-programs.*

[4] *https://aspe.hhs.gov/pdf-report/report-congress-social-risk-factors-and-performance-under-medicares-value-based-purchasing-programs.*

[5] National Academies of Sciences, Engineering, and Medicine. 2017. Accounting for social risk factors in Medicare payment. Washington, DC: The National Academies Press.

least the quality measures described in section 1899B(c)(1) of the Act and that is for the following categories:

- Functional status, such as mobility and self-care at admission to a PAC provider and before discharge from a PAC provider;
- Cognitive function, such as ability to express ideas and to understand and mental status, such as depression and dementia;
- Special services, treatments and interventions such as the need for ventilator use, dialysis, chemotherapy, central line placement and total parenteral nutrition (TPN);
- Medical conditions and co-morbidities such as diabetes, congestive heart failure and pressure ulcers;
- Impairments, such as incontinence and an impaired ability to hear, see or swallow; and
- Other categories deemed necessary and appropriate.

As required under section 1899B(b)(1)(A) of the Act, the standardized patient assessment data must be reported at least for IRF admissions and discharges, but the Secretary may require the data to be reported more frequently.

In this rule, we are proposing to define the standardized patient assessment data that IRFs must report to comply with section 1886(j)(7)(F)(ii) of the Act, as well as the requirements for the reporting of these data. The collection of standardized patient assessment data is critical to our efforts to drive improvement in healthcare quality across the four post-acute care (PAC) settings to which the IMPACT Act applies. We intend to use these data for a number of purposes, including facilitating their exchange and longitudinal use among healthcare providers to enable high quality care and outcomes through care coordination, as well as for quality measure calculations, and identifying comorbidities that might increase the medical complexity of a particular admission.

IRFs are currently required to report patient assessment data through the IRF–PAI by responding to an identical set of assessment questions using an identical set of response options (we refer to each solitary question/response option as a data element and we refer to a group of questions/responses as data elements), both of which incorporate an identical set of definitions and standards. The primary purpose of the identical questions and response options is to ensure that we collect a set of standardized data elements across IRFs which can then be used for a number of purposes, including IRF payment and measure calculation for the IRF QRP.

LTCHs, skilled nursing facilities (SNFs), and home health associations (HHAs) are also required to report patient assessment data through their applicable PAC assessment instruments, and they do so by responding to identical assessment questions developed for their respective settings using an identical set of response options (which incorporate an identical set of definitions and standards). Like the IRF–PAI, the questions and response options for each of these other PAC assessment instruments are standardized across the PAC provider type to which the PAC assessment instrument applies. However, the assessment questions and response options in the four PAC assessment instruments are not currently standardized with each other. As a result, questions and response options that appear on the IRF–PAI cannot be readily compared with questions and response options that appear, for example, on the MDS, the PAC assessment instrument used by SNFs. This is true even when the questions and response options are similar. This lack of standardization across the four PAC providers has limited our ability to compare one PAC provider type with another for purposes such as care coordination and quality improvement.

To achieve a level of standardization across SNFs, LTCHs, IRFs, and HHAs that enables us to make comparisons between them, we are proposing to define ''standardized patient assessment data'' as patient assessment questions and response options that are identical in all four PAC assessment instruments, and to which identical standards and definitions apply. Standardizing the questions and response options across the four PAC assessment instruments will also enable the data to be interoperable, allowing it to be shared electronically, or otherwise, between PAC provider types. It will enable the data to be comparable for various purposes, including the development of cross-setting quality measures and to inform payment models that take into account patient characteristics rather than setting, as described in the IMPACT Act.

We are inviting public comment on this proposed definition.

2. General Considerations Used for the Selection of Proposed Standardized Patient Assessment Data

As part of our effort to identify appropriate standardized patient assessment data for purposes of collecting under the IRF QRP, we sought input from the general public, stakeholder community, and subject matter experts on items that would enable person-centered, high quality health care, as well as access to longitudinal information to facilitate coordinated care and improved beneficiary outcomes.

To identify optimal data elements for standardization, our data element contractor organized teams of researchers for each category, and each team worked with a group of advisors made up of clinicians and academic researchers with expertise in PAC. Information-gathering activities were used to identify data elements, as well as key themes related to the categories described in section 1899B(b)(1)(B) of the Act. In January and February 2016, our data element contractor also conducted provider focus groups for each of the four PAC provider types, and a focus group for consumers that included current or former PAC patients and residents, caregivers, ombudsmen, and patient advocacy group representatives. The Development and Maintenance of Post-Acute Care Cross-Setting Standardized Patient Assessment Data Focus Group Summary Report is available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html.*

Our data element contractor also assembled a 16-member TEP that met on April 7 and 8, 2016, and January 5 and 6, 2017, in Baltimore, Maryland, to provide expert input on data elements that are currently in each PAC assessment instrument, as well as data elements that could be standardized. The Development and Maintenance of Post-Acute Care Cross-Setting Standardized Patient Assessment Data TEP Summary Reports are available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html.*

As part of the environmental scan, data elements currently in the four existing PAC assessment instruments were examined to see if any could be considered for proposal as standardized patient assessment data. Specifically, this evaluation included consideration of data elements in OASIS–C2 (effective January 2017); IRF–PAI, v1.4 (effective October 2016); LCDS, v3.00 (effective April 2016); and MDS 3.0, v1.14 (effective October 2016). Data elements

in the standardized assessment instrument that we tested in the Post-Acute Care Payment Reform Demonstration (PAC PRD)—the Continuity Assessment Record and Evaluation (CARE) were also considered. A literature search was also conducted to determine whether additional data elements to propose as standardized patient assessment data could be identified.

We additionally held four Special Open Door Forums (SODFs) on October 27, 2015; May 12, 2016; September 15, 2016; and December 8, 2016, to present data elements we were considering and to solicit input. At each SODF, some stakeholders provided immediate input, and all were invited to submit additional comments via the CMS IMPACT Mailbox at *PACQualityInitiative@cms.hhs.gov.*

We also convened a meeting with federal agency subject matter experts (SMEs) on May 13, 2016. In addition, a public comment period was open from August 12, to September 12, 2016, to solicit comments on detailed candidate data element descriptions, data collection methods, and coding methods. The IMPACT Act Public Comment Summary Report containing the public comments (summarized and verbatim) and our responses is available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html.*

We specifically sought to identify standardized patient assessment data that we could feasibly incorporate into the LTCH, IRF, SNF, and HHA assessment instruments and that have the following attributes: (1) Being supported by current science; (2) testing well in terms of their reliability and validity, consistent with findings from the Post-Acute Care Payment Reform Demonstration (PAC PRD); (3) the potential to be shared (for example, through interoperable means) among PAC and other provider types to facilitate efficient care coordination and improved beneficiary outcomes; (4) the potential to inform the development of quality, resource use and other measures, as well as future payment methodologies that could more directly take into account individual beneficiary health characteristics; and (5) the ability to be used by practitioners to inform their clinical decision and care planning activities. We also applied the same considerations that we apply with quality measures, including the CMS Quality Strategy which is framed using the three broad aims of the National Quality Strategy.

D. Policy for Retaining IRF QRP Measures and Proposal To Apply That Policy to Standardized Patient Assessment Data

In the CY 2013 Hospital Outpatient Prospective Payment System/Ambulatory Surgical Center (OPPS/ASC) Payment Systems and Quality Reporting Programs final rule (77 FR 68500 through 68507), we adopted a policy that allows any quality measure adopted for use in the IRF QRP to remain in effect until the measure is removed, suspended, or replaced. For further information on how measures are considered for removal, suspension, or replacement, please refer to the CY 2013 OPPS/ASC final rule (77 FR 68500). We propose to apply this policy to the standardized patient assessment data that we adopt for the IRF QRP.

We are inviting public comment on our proposal.

E. Policy for Adopting Changes to IRF QRP Measures and Proposal To Apply That Policy to Standardized Patient Assessment Data

In the CY 2013 OPPS/ASC final rule (77 FR 68500 through 68507), we adopted a subregulatory process to incorporate updates to IRF quality measure specifications that do not substantively change the nature of the measure. Substantive changes will be proposed and finalized through rulemaking. For further information on what constitutes a substantive versus a non-substantive change and the subregulatory process for non-substantive changes, please refer to the CY 2013 OPPS/ASC final rule (77 FR 68500). We propose to apply this policy to the standardized patient assessment data that we adopt for the IRF QRP.

We are inviting public comment on our proposal.

F. Quality Measures Currently Adopted for the IRF QRP

The IRF QRP currently has 18 currently adopted measures, as outlined in Table 7.

TABLE 7—QUALITY MEASURES CURRENTLY ADOPTED FOR THE IRF QRP

Short name	Measure name and data source
IRF–PAI	
Pressure Ulcers	Percent of Residents or Patients with Pressure Ulcers That Are New or Worsened (Short Stay) (NQF #0678).
Patient Influenza Vaccine	Percent of Residents or Patients Who Were Assessed and Appropriately Given the Seasonal Influenza Vaccine (Short Stay) (NQF #0680).
Application of Falls	Application of Percent of Residents Experiencing One or More Falls with Major Injury (Long Stay) (NQF #0674).*
Application of Functional Assessment.	Application of Percent of LTCH Patients with an Admission and Discharge Functional Assessment and a Care Plan That Addresses Function (NQF #2631).*
Change in Self-Care	IRF Functional Outcome Measure: Change in Self-Care Score for Medical Rehabilitation Patients (NQF #2633).**
Change in Mobility	IRF Functional Outcome Measure: Change in Mobility Score for Medical Rehabilitation Patients (NQF #2634).**
Discharge Self-Care Score	IRF Functional Outcome Measure: Discharge Self-Care Score for Medical Rehabilitation Patients (NQF #2635).**
Discharge Mobility Score	IRF Functional Outcome Measure: Discharge Mobility Score for Medical Rehabilitation Patients (NQF #2636).**
DRR	Drug Regimen Review Conducted with Follow-Up for Identified Issues—PAC IRF QRP.*
NHSN	
CAUTI	National Healthcare Safety Network (NHSN) Catheter-Associated Urinary Tract Infection (CAUTI) Outcome Measure (NQF #0138).

TABLE 7—QUALITY MEASURES CURRENTLY ADOPTED FOR THE IRF QRP—Continued

Short name	Measure name and data source
MRSA	NHSN Facility-Wide Inpatient Hospital-Onset Methicillin-Resistant *Staphylococcus aureus* (MRSA) Bacteremia Outcome Measure (NQF #1716).
CDI	NHSN Facility-wide Inpatient Hospital-Onset *Clostridium difficile* Infection (CDI) Outcome Measure (NQF #1717).
HCP Influenza Vaccine	Influenza Vaccination Coverage among Healthcare Personnel (NQF #0431).
Claims-based	
All-Cause Readmissions	All-Cause Unplanned Readmission Measure for 30 Days Post Discharge from IRFs (NQF #2502).
MSPB	Medicare Spending per Beneficiary (MSPB)—PAC IRF QRP.*
DTC	Discharge to Community—PAC IRF QRP.*
Potentially Preventable Readmissions (PPR) 30 day.	Potentially Preventable 30-Day Post-Discharge Readmission Measure for IRF QRP.*
PPR Within Stay	Potentially Preventable Within Stay Readmission Measure for IRFs.*

* Not currently NQF-endorsed for the IRF setting.
** In satisfaction of section 1899B(c)(1) of the Act quality measure domain: Functional status, cognitive function, and changes in function and cognitive function domain.

G. IRF QRP Quality Measures Proposed Beginning With the FY 2020 IRF QRP

Beginning with the FY 2020 IRF QRP, in addition to the quality measures we are retaining under our policy described in section XII.F. of this proposed rule, we are proposing to remove the current pressure ulcer measure entitled Percent of Residents or Patients with Pressure Ulcers That Are New or Worsened (Short Stay) (NQF #0678) and to replace it with a modified version of the measure entitled Changes in Skin Integrity Post-Acute Care: Pressure Ulcer/Injury. We are also proposing to characterize the data elements described below as standardized patient assessment data under section 1899B(b)(1)(B) of the Act that must be reported by IRFs under the IRF QRP through the IRF–PAI.

1. Proposal To Replace the Current Pressure Ulcer Quality Measure, Percent of Residents or Patients With Pressure Ulcers That Are New or Worsened (Short Stay) (NQF #0678), With a Modified Pressure Ulcer Measure, Changes in Skin Integrity Post-Acute Care: Pressure Ulcer/Injury

a. Measure Background

In this proposed rule, we are proposing to remove the current pressure ulcer measure, Percent of Residents or Patients with Pressure Ulcers That Are New or Worsened (Short Stay) (NQF #0678), from the IRF QRP measure set and to replace it with a modified version of that measure, Changes in Skin Integrity Post-Acute Care: Pressure Ulcer/Injury, beginning with the FY 2020 IRF QRP. The change in the measure name is to reduce confusion about the new modified measure. The modified version differs from the current version of the measure because it includes new or worsened unstageable pressure ulcers, including deep tissue injuries (DTIs), in the measure numerator. The proposed modified version of the measure also contains updated specifications intended to eliminate redundancies in the assessment items needed for its calculation and to reduce the potential for underestimating the frequency of pressure ulcers. The modified version of the measure would satisfy the IMPACT Act domain of skin integrity and changes in skin integrity.

b. Measure Importance

As described in the FY 2012 IRF PPS final rule (76 FR 47876 through 47878), pressure ulcers are high-cost adverse events and are an important measure of quality. For information on the history and rationale for the relevance, importance, and applicability of having a pressure ulcer measure in the IRF QRP, we refer readers to the FY 2012 IRF PPS final rule (76 FR 47876 through 47878) and the FY 2014 IRF PPS final rule (78 FR 47911 through 47912).

We are proposing to adopt a modified version of the current pressure ulcer measure because unstageable pressure ulcers, including DTIs, are similar to Stage 2, Stage 3, and Stage 4 pressure ulcers in that they represent poor outcomes, are a serious medical condition that can result in death and disability, are debilitating and painful, and are often an avoidable outcome of medical care.[6] [7] [8] [9] [10] [11] Studies show that most pressure ulcers can be avoided and can also be healed in acute, post-acute, and long-term care settings with appropriate medical care.[12] Furthermore, some studies indicate that DTIs, if managed using appropriate care, can be resolved without deteriorating into a worsened pressure ulcer.[13] [14]

While there are few studies that provide information regarding the incidence of unstageable pressure ulcers in PAC settings, an analysis conducted by a contractor suggests the incidence of unstageable pressure ulcers varies according to the type of unstageable pressure ulcer and setting. This analysis examined the national incidence of new unstageable pressure ulcers in IRFs at discharge compared with admission using IRF discharges from January through December 2015. The contractor found a national incidence of 0.14 percent of new unstageable pressure ulcers due to slough and/or eschar, 0.02

[6] Casey, G. (2013). ''Pressure ulcers reflect quality of nursing care.'' Nurs N Z 19(10): 20–24.

[7] Gorzoni, M.L. and S.L. Pires (2011). ''Deaths in nursing homes.'' Rev Assoc Med Bras 57(3): 327–331.

[8] Thomas, J.M., et al. (2013). ''Systematic review: health-related characteristics of elderly hospitalized adults and nursing home residents associated with short-term mortality.'' J Am Geriatr Soc 61(6): 902–911.

[9] White-Chu, E.F., et al. (2011). ''Pressure ulcers in long-term care.'' Clin Geriatr Med 27(2): 241–258.

[10] Bates-Jensen BM. Quality indicators for prevention and management of pressure ulcers in vulnerable elders. Ann Int Med. 2001;135 (8 Part 2), 744–51.

[11] Bennet, G, Dealy, C Posnett, J (2004). The cost of pressure ulcers in the UK, *Age and Aging,* 33(3):230–235.

[12] Black, Joyce M., et al. ''Pressure ulcers: avoidable or unavoidable? Results of the national pressure ulcer advisory panel consensus conference.'' *Ostomy-Wound Management* 57.2 (2011): 24.

[13] Sullivan, R. (2013). A Two-year Retrospective Review of Suspected Deep Tissue Injury Evolution in Adult Acute Care Patients. Ostomy Wound Management 59(9).

[14] Posthauer, ME, Zulkowski, K. (2005). Special to OWM: The NPUAP Dual Mission Conference: Reaching Consensus on Staging and Deep Tissue Injury. Ostomy Wound Management 51(4) *http://www.o-wm.com/content/the-npuap-dual-mission-conference-reaching-consensus-staging-and-deep-tissue-injury.*

percent of new unstageable pressure ulcers due to non-removable dressing/device, and 0.26 percent of new DTIs. In addition, an international study spanning the time period 2006 to 2009 provides some evidence to suggest that the proportion of pressure ulcers identified as DTI has increased over time. The study found DTIs increased by three fold, to 9 percent of all observed ulcers in 2009, and that DTIs were more prevalent than either Stage 3 or 4 ulcers. During the same time period, the proportion of Stage 1 and 2 ulcers decreased, and the proportion of Stage 3 and 4 ulcers remained constant.[15]

The inclusion of unstageable pressure ulcers, including DTIs, in the numerator of this measure is expected to increase measure scores and variability in measure scores, thereby improving the ability to discriminate among poor- and high-performing IRFs. In the currently implemented pressure ulcer measure, Percent of Residents or Patients with Pressure Ulcers That Are New or Worsened (Short Stay) (NQF #0678), analysis using data from Quarter 4 2016 reveals that the IRF mean score is 0.64 percent and the 25th and 75th percentiles are 0 percent and 0.95 percent, respectively. In the proposed measure, Changes in Skin Integrity Post-Acute Care: Pressure Ulcer/Injury, during the same timeframe, the IRF mean score is 1.46 percent and the 25th and 75th percentiles are 0 percent and 2.27 percent, respectively.

c. Stakeholder Feedback

Our measure development contractor sought input from subject matter experts, including Technical Expert Panels (TEPs), over the course of several years on various skin integrity topics and specifically those associated with the inclusion of unstageable pressure ulcers, including DTIs. Most recently, on July 18, 2016, a TEP convened by our measure development contractor provided input on the technical specifications of this proposed quality measure, including the feasibility of implementing the proposed measure's updates across PAC settings. The TEP supported the updates to the measure across PAC settings, including the inclusion in the numerator of unstageable pressure ulcers due to slough and/or eschar that are new or worsened, new unstageable pressure ulcers due to a non-removable dressing or device, and new DTIs. The TEP also supported the use of different data elements for measure calculation. The TEP recommended supplying additional guidance to providers regarding each type of unstageable pressure ulcer. This support was in agreement with earlier TEP meetings, held on June 13 and November 15, 2013, which had recommended that we update the specifications for the pressure ulcer measure to include unstageable pressure ulcers in the numerator.[16] [17] Exploratory data analysis conducted by our measure development contractor suggests that the addition of unstageable pressure ulcers, including DTIs, will increase the observed incidence and variation in the rate of new or worsened pressure ulcers at the facility level, which may improve the ability of the proposed quality measure to discriminate between poor- and high-performing facilities.

We solicited stakeholder feedback on this proposed measure by means of a public comment period held from October 17 through November 17, 2016. In general, we received considerable support for the proposed measure. A few commenters supported all of the changes to the current pressure ulcer measure that resulted in the proposed measure, with one commenter noting the significance of the work to align the pressure ulcer quality measure specifications across the PAC settings.

Many commenters supported the inclusion of unstageable pressure ulcers due to slough/eschar, due to non-removable dressing/device, and DTIs in the proposed quality measure. Other commenters did not support the inclusion of DTIs in the proposed quality measure because they stated that there is no universally accepted definition for this type of skin injury.

Some commenters provided feedback on the data elements used to calculate the proposed quality measure. We believe that these data elements will promote facilitation of cross-setting quality comparison as mandated by the IMPACT Act, alignment between quality measures and payment, reduction in redundancies in assessment items, and prevention of inappropriate underestimation of pressure ulcers. The currently implemented pressure ulcer measure is calculated using retrospective data elements that assess the number of new or worsened pressure ulcers at each stage, while the proposed measure is calculated using the number of unhealed pressure ulcers at each stage after subtracting the number that were present upon admission. Some commenters did not support the data elements that would be used to calculate the proposed measure and requested further testing of these data elements. Other commenters supported the use of these data elements, stating that these data elements simplified the measure calculation process.

The public comment summary report for the proposed measure is available on the CMS Web site at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html.* This summary includes further detail about our responses to various concerns and ideas stakeholders raised.

The NQF-convened Measures Application Partnership (MAP) Post-Acute Care/Long-Term Care (PAC/LTC) Workgroup met on December 14 and 15, 2016, and the MAP Coordinating Committee met on January 24 and 25, 2017, and provided input to CMS about this proposed measure. The MAP provided a recommendation of ''conditional support for rulemaking'' for use of the proposed measure in the IRF QRP. The MAP's conditions of support include that, as a part of measure implementation, we provide guidance on the correct collection and calculation of the measure result, as well as guidance on public reporting Web sites explaining the impact of the specification changes on the measure result. The MAP's conditions also specify that we continue analyzing the proposed measure in order to investigate unexpected results reported in public comment. We intend to fulfill these conditions by offering additional training opportunities and educational materials in advance of public reporting, and by continuing to monitor and analyze the proposed measure. More information about the MAP's recommendations for this measure is

[15] VanGilder, C, MacFarlane, GD, Harrison, P, Lachenbruch, C, Meyer, S (2010). The Demographics of Suspected Deep Tissue Injury in the United States: An Analysis of the International Pressure Ulcer Prevalence Survey 2006–2009. *Advances in Skin & Wound Care.* 23(6): 254–261.

[16] Schwartz, M., Nguyen, K.H., Swinson Evans, T.M., Ignaczak, M.K., Thaker, S., and Bernard, S.L.: Development of a Cross-Setting Quality Measure for Pressure Ulcers: OY2 Information Gathering, Final Report. Centers for Medicare & Medicaid Services, November 2013. Available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/Downloads/Development-of-a-Cross-Setting-Quality-Measure-for-Pressure-Ulcers-Information-Gathering-Final-Report.pdf.*

[17] Schwartz, M., Ignaczak, M.K., Swinson Evans, T.M., Thaker, S., and Smith, L.: The Development of a Cross-Setting Pressure Ulcer Quality Measure: Summary Report on November 15, 2013, Technical Expert Panel Follow-Up Webinar. Centers for Medicare & Medicaid Services, January 2014. Available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/Downloads/Development-of-a-Cross-Setting-Pressure-Ulcer-Quality-Measure-Summary-Report-on-November-15-2013-Technical-Expert-Pa.pdf.*

available at *http://www.qualityforum.org/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=84452.*

We reviewed the NQF's consensus endorsed measures and were unable to identify any NQF-endorsed pressure ulcer quality measures for PAC settings that are inclusive of unstageable pressure ulcers. There are related measures, but after careful review, we determined these measures are not applicable for use in IRFs based on the populations addressed or other aspects of the specifications. We are unaware of any other such quality measures that have been endorsed or adopted by another consensus organization for the IRF setting. Therefore, based on the evidence discussed above, we are proposing to adopt the quality measure entitled, Changes in Skin Integrity Post-Acute Care: Pressure Ulcer/Injury, for the IRF QRP beginning with the FY 2020 IRF QRP. We plan to submit the proposed measure to the NQF for endorsement consideration as soon as feasible.

d. Data Collection

The data for this quality measure would be collected using the IRF–PAI, which is currently submitted by IRFs through the Quality Improvement and Evaluation System (QIES) Assessment Submission and Processing (ASAP) System. The proposed standardized patient assessment admission and discharge data applicable to this measure that must be reported by IRFs for patients discharged on or after October 1, 2018 is described in section XII.K of this proposed rule. While the inclusion of unstageable wounds in the proposed measure results in a measure calculation methodology that is different from the methodology used to calculate the current pressure ulcer measure, the data elements needed to calculate the proposed measure are already included on the IRF–PAI. In addition, our proposal to eliminate duplicative data elements that were used in calculation of the current pressure ulcer measure will result in an overall reduced reporting burden for IRFs for the proposed measure. To view the updated IRF–PAI, with the changes, we refer the reader to *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/IRF-Quality-Reporting/IRF-PAI-and-IRF-QRP-Manual.html.* For more information on IRF–PAI submission using the QIES ASAP System, we refer readers to *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientRehabFacPPS/IRFPAI.html* and *http://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/IRF-Quality-Reporting/index.html.*

For technical information about this proposed measure, including information about the measure calculation and the standardized patient assessment data elements used to calculate this measure, we refer readers to the document titled, *Proposed Specifications for IRF QRP Quality Measures and Standardized Data Elements,* available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/IRF-Quality-Reporting/IRF-Quality-Reporting-Program-Measures-Information-.html.*

We are proposing that IRFs would begin reporting the proposed pressure ulcer measure Changes in Skin Integrity Post-Acute Care: Pressure Ulcer/Injury, which will replace the current pressure ulcer measure, with data collection beginning October 1, 2018.

We are inviting public comment on our proposal to replace the current pressure ulcer measure, Percent of Residents or Patients with Pressure Ulcers That Are New or Worsened (Short Stay) (NQF #0678), with a modified version of that measure, entitled Changes in Skin Integrity Post-Acute Care: Pressure Ulcer/Injury, for the IRF QRP beginning with the FY 2020 IRF QRP.

H. Proposed Removal of the All-Cause Unplanned Readmission Measure for 30 Days Post-Discharge From IRFs From the IRF QRP

We are proposing to remove the All-Cause Unplanned Readmission Measure for 30 Days Post-Discharge from IRFs (NQF #2502) from the IRF QRP.

In the FY 2016 IRF PPS final rule (80 FR 47087 through 47089), we adopted the All-Cause Unplanned Readmission Measure for 30 Days Post-Discharge from IRFs (NQF #2502) for the IRF QRP. This measure assesses all-cause unplanned hospital readmissions from IRFs. In the FY 2017 IRF PPS final rule (81 FR 52103 through 52108), we adopted the Potentially Preventable 30-Day Post-Discharge Readmission Measure for IRF QRP to fulfill IMPACT Act requirements. We also adopted the Potentially Preventable Within Stay Readmission Measure for IRFs (81 FR 52108 through 52111) for the IRF QRP. In response to the FY 2017 IRF PPS proposed rule, we received public comments expressing concern over the multiplicity of readmission measures and the overlap between the All-Cause Readmission and Potentially Preventable Readmission (PPR) 30-Day Post-Discharge measures (see 81 FR 52106; 81 FR 52109 through 52111). Commenters also commented that multiple readmission measures would create confusion and require additional effort by providers to track and improve performance.

We retained the All-Cause Readmission measure because it would allow us to monitor trends in both all-cause and PPR rates. In particular, we could compare facility performance on the All-Cause Readmission and PPR 30-Day Post-Discharge measures. However, upon further consideration of the public comments, we believe that removing the All-Cause Readmission measure and retaining the PPR 30-Day Post-Discharge measure in the IRF QRP would prevent duplication, because potentially preventable readmissions are a subset of all-cause readmissions. Although there is no data collection burden associated with these claims-based measures, we recognize that having 3 hospital readmission measures in the IRF QRP may create confusion. We also agree with commenters who preferred the PPR measures, which identify a subset of all-cause readmissions, because we believe the PPR measures will be more actionable for quality improvement.

We are proposing to remove the All-Cause Readmission measure beginning with the FY 2019 IRF QRP. We are proposing that public reporting of this measure would end by October 2018 when public reporting of the PPR 30-Day Post-Discharge and PPR Within Stay measures begins by October 2018. We refer readers to section XII.N of this proposed rule for more information regarding our proposal to publicly report the PPR 30-Day Post Discharge and PPR Within Stay measures. We refer readers to the PPR 30-Day Post-Discharge and PPR Within Stay measure specifications available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/IRF-Quality-Reporting/Downloads/Measure-Specifications-for-FY17-IRF-QRP-Final-Rule.pdf.*

We are inviting public comment on our proposal to remove the All-Cause Unplanned Readmission Measure for 30 Days Post-Discharge from IRFs (NQF #2502) from the IRF QRP, beginning with the FY 2019 IRF QRP.

I. IRF QRP Quality Measures Under Consideration for Future Years

We are inviting public comment on the importance, relevance, appropriateness, and applicability of each of the quality measures listed in Table 8 for future years in the IRF QRP.

In this proposed rule, we are soliciting public comments on the use of survey-based experience of care

measures for the IRF QRP. We are currently developing an experience of care survey for IRFs, and survey-based measures will be developed from this survey. These survey-based measures may be considered for inclusion in the IRF QRP through future notice-and-comment rulemaking. This survey was developed using a rigorous survey development methodology that included a public request for measures (refer to Request for Information To Aid in the Design and Development of a Survey Regarding Patient and Family Member Experiences With Care Received in Inpatient Rehabilitation Facilities, at 80 FR 72726 through 72727); focus groups and interviews with patients, family members, and caregivers; input from a TEP of IRF providers, researchers, and patient advocates; and cognitive interviewing. The survey has also been field tested. The survey explores experience of care across five main areas: (1) Beginning stay at the rehabilitation hospital/unit; (2) interactions with staff; (3) experience during the rehabilitation hospital/unit stay; (4) preparing for leaving the rehabilitation hospital/unit; and (5) overall rehabilitation hospital/unit rating. We are specifically interested in comments regarding survey implementation and logistics, use of the survey-based measures in the IRF QRP, and general feedback. We are also considering a measure focused on pain that relies on the collection of patient-reported pain data. We are inviting public comment on the possible inclusion of such a measure in future years of the IRF QRP.

1. IMPACT Act Measure—Possible Future Update To Measure Specifications

In the FY 2017 IRF PPS final rule (81 FR 52095 through 52103), we finalized the Discharge to Community-PAC IRF QRP measure, which assesses successful discharge to the community from an IRF setting, with successful discharge to the community including no unplanned rehospitalizations and no death in the 31 days following discharge from the IRF. We received public comments (see 81 FR 52098 through 52099), recommending exclusion of baseline nursing facility residents from the measure, as these residents did not live in the community prior to their IRF stay. At that time, we highlighted that using Medicare FFS claims alone, we were unable to accurately identify baseline nursing facility residents. We stated that potential future modifications of the measure could include assessment of the feasibility and impact of excluding baseline nursing facility residents from the measure through the addition of patient assessment-based data. In response to these public comments, we are considering a future modification of the Discharge to Community-PAC IRF QRP measure, which would exclude baseline nursing facility residents from the measure. We are inviting public comment on the possible exclusion of baseline nursing facility residents from the Discharge to Community-PAC IRF QRP measure in future years of the IRF QRP.

2. IMPACT Act Implementation Update

As a result of the input and suggestions provided by technical experts at the TEPs held by our measure developer, and through public comment, we are engaging in additional development work, including performing additional testing, for two measures that would satisfy the domain of accurately communicating the existence of and providing for the transfer of health information and care preferences in section 1899B(c)(1)(E) of the Act. The measures under development are (1) Transfer of Information at Post-Acute Care Admission, Start or Resumption of Care from other Providers/Settings, and (2) Transfer of Information at Post-Acute Care Discharge, and End of Care to other Providers/Settings. We intend to specify these measures under section 1899B(c)(1)(E) of the Act no later than October 1, 2018, and we intend to propose to adopt them for the FY 2021 IRF QRP, with data collection beginning on or about October 1, 2019.

TABLE 8—IRF QRP QUALITY MEASURES UNDER CONSIDERATION FOR FUTURE YEARS

NQS priority	Patient- and caregiver-centered care
Measures	• Experience of Care. • Application of Percent of Residents Who Self-Report Moderate to Severe Pain (Short Stay) (NQF #0676).
	Communication and care coordination
Measure	• Modification of the Discharge to Community-Post Acute Care Inpatient Rehabilitation Facility Quality Reporting Program measure.

J. Proposed Standardized Patient Assessment Data Reporting for the IRF QRP

1. Proposed Standardized Patient Assessment Data Reporting for the FY 2019 IRF QRP

Section 1886(j)(7)(F)(ii) of the Act requires that for fiscal year 2019 and each subsequent year, IRFs report standardized patient assessment data required under section 1899B(b)(1) of the Act. As we describe in more detail above, we are proposing that the current pressure ulcer measure, Percent of Residents or Patients with Pressure Ulcers That Are New or Worsened (Short Stay) (NQF #0678), be removed and replaced with the proposed pressure ulcer measure, Changes in Skin Integrity Post-Acute Care: Pressure Ulcer/Injury, beginning with the FY 2020 IRF QRP. The current pressure ulcer measure will remain in the IRF QRP until that time. Accordingly, for the requirement that IRFs report standardized patient assessment data for the FY 2019 IRF QRP, we are proposing that the data elements used to calculate the current pressure ulcer measure, Percent of Residents or Patients with Pressure Ulcers That Are New or Worsened (Short Stay) (NQF #0678) meet the definition of standardized patient assessment data for medical conditions and co-morbidities under section 1899B(b)(1)(B)(iv) of the Act, and that the successful reporting of that data under section 1886(j)(7)(F)(i) of the Act for admissions as well as discharges occurring during fourth quarter CY 2017 would also satisfy the requirement to report standardized patient assessment data for the FY 2019 IRF QRP.

The collection of assessment data pertaining to skin integrity, specifically pressure related wounds, is important for multiple reasons. Clinical decision support, care planning, and quality improvement all depend on reliable assessment data collection. Pressure

related wounds represent poor outcomes, are a serious medical condition that can result in death and disability, are debilitating, painful and are often an avoidable outcome of medical care.[18] [19] [20] [21] [22] [23] Pressure related wounds are considered healthcare acquired conditions.

As we note above, the data elements needed to calculate the current pressure ulcer measure are already included on the IRF–PAI and reported for IRFs, and exhibit validity and reliability for use across PAC providers. Item reliability for these data elements was also tested for the nursing home setting during implementation of MDS 3.0. Testing results are from the RAND Development and Validation of MDS 3.0 project.[24] The RAND pilot test of the MDS 3.0 data elements showed good reliability and is also applicable to both the IRF–PAI and the LTCH CARE Data Set because the data elements tested are the same. Across the pressure ulcer data elements, the average gold-standard nurse to gold-standard nurse kappa statistic was 0.905. The average gold-standard nurse to facility-nurse kappa statistic was 0.937. Data elements used to risk adjust this quality measure were also tested under this same pilot test, and the gold-standard to gold-standard kappa statistic, or percent agreement (where kappa statistic not available), ranged from 0.91 to 0.99 for these data elements. These kappa scores indicate ''almost perfect'' agreement using the Landis and Koch standard for strength of agreement.[25]

The data elements used to calculate the current pressure ulcer measure received public comment on several occasions, including when that measure was proposed in the FY 2012 IRF PPS (76 FR 47876) and IPPS/LTCH PPS proposed rules (76 FR 51754). Further, they were discussed in the past by TEPs held by our measure development contractor on June 13 and November 15, 2013, and recently by a TEP on July 18, 2016. TEP members supported the measure and its cross-setting use in PAC. The report, Technical Expert Panel Summary Report: Refinement of the Percent of Patients or Residents with Pressure Ulcers that are New or Worsened (Short-Stay) (NQF #0678) Quality Measure for Skilled Nursing Facilities (SNFs), Inpatient Rehabilitation Facilities (IRFs), Long-Term Care Hospitals (LTCHs), and Home Health Agencies (HHAs)'' is available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html.*

We are inviting public comment on this proposal.

2. Proposed Standardized Patient Assessment Data Reporting Beginning With the FY 2020 IRF QRP

We describe below in this section our proposals for the reporting of standardized patient assessment data by IRFs beginning with the FY 2020 IRF QRP. For FY 2020, this would apply to all Medicare Part A and MA patients discharged between October 1, 2018 and December 31, 2018. IRFs would be required to report these data on admission and discharge, with the exception of three data elements (Brief Interview of Mental Status (BIMS), Hearing, and Vision) that would be collected on admission only. The BIMS, Hearing, and Vision data elements would be assessed at admission only due to the relatively stable nature of the types of cognitive function, hearing impairment, and vision impairment, making it unlikely that these assessments would change between the start and end of the IRF stay. Assessment of the BIMS, Hearing, and Vision data elements at discharge would introduce additional burden without improving the quality or usefulness of the data, and is unnecessary. Following the initial reporting year for the FY 2020 IRF QRP, subsequent years for the IRF QRP would be based on a full calendar year of such data reporting.

In selecting the data elements described below in this section, we carefully weighed the balance of burden in assessment-based data collection and aimed to minimize additional burden through the utilization of existing data in the assessment instruments. We also note that the patient and resident assessment instruments are considered part of the medical record and sought the inclusion of data elements relevant to patient care.

We also took into consideration the following factors for each data element: Overall clinical relevance; ability to support clinical decisions, care planning, and interoperable exchange to facilitate care coordination during transitions in care; and the ability to capture medical complexity and risk factors that can inform both payment and quality. Additionally the data elements had to have strong scientific reliability and validity; be meaningful enough to inform longitudinal analysis by providers; had to have received general consensus agreement for its usability; and had to have the ability to collect such data once but support multiple uses. Further, to inform the final set of data elements for proposal, we took into account technical and clinical subject matter expert review, public comment, and consensus input in which such principles were applied. We also took into account the consensus work and empirical findings from the Post-Acute Care Payment Reform Demonstration. We acknowledge that during the development process that led to these proposals, some providers expressed concern that changes to the IRF–PAI to accommodate standardized patient assessment data reporting would lead to an overall increased reporting burden. However, we note that there is no additional data collection burden for standardized data already collected and submitted on the quality measures.

a. Proposed Standardized Patient Assessment Data by Category

(1) Functional Status Data

We are proposing that the data elements currently reported by IRFs to calculate the proposed measure, Application of Percent of Long-Term Care Hospital Patients with an Admission and Discharge Functional Assessment and a Care Plan That Addresses Function (NQF #2631), would also meet the definition of standardized patient assessment data for functional status under section 1899B(b)(1)(B)(i) of the Act, and that the successful reporting of that data under section 1886(j)(7)(F)(i) of the Act would also satisfy the requirement to report standardized patient assessment data under section 1886(j)(7)(F)(ii) of the Act.

These patient assessment data for functional status are from the CARE Item Set. The development of the CARE Item Set and a description and rationale for each item is described in a report

[18] Casey, G. (2013). ''Pressure ulcers reflect quality of nursing care.'' *Nurs N Z* 19(10): 20–24.

[19] Gorzoni, M.L. and S.L. Pires (2011). ''Deaths in nursing homes.'' *Rev Assoc Med Bras* 57(3): 327–331.

[20] Thomas, J.M., et al. (2013). ''Systematic review: health-related characteristics of elderly hospitalized adults and nursing home residents associated with short-term mortality.'' *J Am Geriatr Soc* 61(6): 902–911.

[21] White-Chu, E.F., et al. (2011). ''Pressure ulcers in long-term care.'' *Clin Geriatr Med* 27(2): 241–258.

[22] Bates-Jensen BM. Quality indicators for prevention and management of pressure ulcers in vulnerable elders. *Ann Int Med.* 2001;135 (8 Part 2), 744–51.

[23] Bennet, G, Dealy, C Posnett, J (2004). The cost of pressure ulcers in the UK, *Age and Aging,* 33(3):230–235.

[24] Saliba, D., & Buchanan, J. (2008, April). *Development and validation of a revised nursing home assessment tool: MDS 3.0.* Contract No. 500–00–0027/Task Order #2. Santa Monica, CA: Rand Corporation. Retrieved from *http://www.cms.hhs.gov/NursingHomeQualityInits/Downloads/MDS30FinalReport.pdf.*

[25] Landis, R., & Koch, G. (1977, March). The measurement of observer agreement for categorical data. *Biometrics* 33(1), 159–174.

entitled ''The Development and Testing of the Continuity Assessment Record and Evaluation (CARE) Item Set: Final Report on the Development of the CARE Item Set: Volume 1 of 3.'' [26] Reliability and validity testing were conducted as part of CMS' Post-Acute Care Payment Reform Demonstration, and we concluded that the functional status items have acceptable reliability and validity. A description of the testing methodology and results are available in several reports, including the report entitled ''The Development and Testing of the Continuity Assessment Record And Evaluation (CARE) Item Set: Final Report On Reliability Testing: Volume 2 of 3'' [27] and the report entitled ''The Development and Testing of The Continuity Assessment Record And Evaluation (CARE) Item Set: Final Report on Care Item Set and Current Assessment Comparisons: Volume 3 of 3.'' [28] The reports are available on CMS' Post-Acute Care Quality Initiatives Web page at *http://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/CARE-Item-Set-and-B-CARE.html.* For more information about this quality measure, we refer readers to the FY 2016 IRF PPS final rule (80 FR 47100 through 47111).

We are inviting public comment on this proposal.

(2) Cognitive Function and Mental Status Data

Cognitive function and mental status in PAC patient and resident populations can be affected by a number of underlying conditions, including dementia, stroke, traumatic brain injury, side effects of medication, metabolic and/or endocrine imbalances, delirium, and depression.[29] The assessment of cognitive function and mental status by PAC providers is important because of the high percentage of patients and residents with these conditions,[30] and the opportunity for improving the quality of care. Symptoms of dementia may improve with pharmacotherapy, occupational therapy, or physical activity,[31] [32] [33] and promising treatments for severe traumatic brain injury are currently being tested.[34] For older patients and residents diagnosed with depression, treatment options to reduce symptoms and improve quality of life include antidepressant medication and psychotherapy,[35] [36] [37] [38] and targeted services, such as therapeutic recreation, exercise, and restorative nursing, to increase opportunities for psychosocial interaction.[39]

Accurate assessment of cognitive function and mental status of patients and residents in PAC would be expected to have a positive impact on the National Quality Strategy's domains of patient and family engagement, patient safety, care coordination, clinical process/effectiveness, and efficient use of healthcare resources. For example, standardized assessment of cognitive function and mental status of patients and residents in PAC will support establishing a baseline for identifying changes in cognitive function and mental status (for example, delirium), anticipating the patient or resident's ability to understand and participate in treatments during a PAC stay, ensuring patient and resident safety (for example, risk of falls), and identifying appropriate support needs at the time of discharge or transfer. Standardized assessment data elements will enable or support clinical decision-making and early clinical intervention; person-centered, high quality care through: Facilitating better care continuity and coordination; better data exchange and interoperability between settings; and longitudinal outcome analysis. Hence, reliable data elements assessing cognitive impairment and mental status are needed in order to initiate a management program that can optimize a patient or resident's prognosis and reduce the possibility of adverse events.

(i) Brief Interview for Mental Status (BIMS)

We are proposing that the data elements that comprise the Brief Interview for Mental Status meet the definition of standardized patient assessment data for cognitive function and mental status under section 1899B(b)(1)(B)(ii) of the Act. The proposed data elements consist of seven BIMS questions that result in a cognitive function score. For more information on the BIMS, we refer readers to the document titled, *Proposed Specifications for IRF QRP Quality Measures and Standardized Data Elements,* available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/IRF-Quality-Reporting/IRF-Quality-Reporting-Program-Measures-Information-.html.*

The BIMS is a performance-based cognitive assessment that assesses repetition, recall with and without prompting, and temporal orientation. It was developed to be a brief screener to assess cognition, with a focus on learning and memory. Dementia and cognitive impairment are associated with long-term functional dependence and, consequently, poor quality of life and increased health care costs and mortality.[40] This makes assessment of mental status and early detection of cognitive decline or impairment critical in the PAC setting. The burden of cognitive impairment in PAC is high. The intensity of routine nursing care is higher for patients and residents with cognitive impairment than those without, and dementia is a significant variable in predicting readmission after discharge to the community from PAC

[26] Barbara Gage et al., ''The Development and Testing of the Continuity Assessment Record and Evaluation (CARE) Item Set: Final Report on the Development of the CARE Item Set '' (RTI International, 2012).

[27] Ibid.

[28] Ibid.

[29] National Institute on Aging. (2014). Assessing Cognitive Impairment in Older Patients. A Quick Guide for Primary Care Physicians. Retrieved from *https://www.nia.nih.gov/alzheimers/publication/assessing-cognitive-impairment-older-patients.*

[30] Gage B., Morley M., Smith L., et al. (2012). Post-Acute Care Payment Reform Demonstration (Final report, Volume 4 of 4). Research Triangle Park, NC: RTI International.

[31] Casey D.A., Antimisiaris D., O'Brien J. (2010). Drugs for Alzheimer's Disease: Are They Effective? *Pharmacology & Therapeutics,* 35, 208–11.

[32] Graff M.J., Vernooij-Dassen M.J., Thijssen M., Dekker J., Hoefnagels W.H., Rikkert M.G.O. (2006). Community Based Occupational Therapy for Patients with Dementia and their Care Givers: Randomised Controlled Trial. BMJ, 333(7580): 1196.

[33] Bherer L., Erickson K.I., Liu-Ambrose T. (2013). A Review of the Effects of Physical Activity and Exercise on Cognitive and Brain Functions in Older Adults. Journal of Aging Research, 657508.

[34] Giacino J.T., Whyte J., Bagiella E., et al. (2012). Placebo-controlled trial of amantadine for severe traumatic brain injury. New England Journal of Medicine, 366(9), 819–826.

[35] Alexopoulos G.S., Katz I.R., Reynolds C.F. 3rd, Carpenter D., Docherty J.P., Ross R.W. (2001). Pharmacotherapy of depression in older patients: a summary of the expert consensus guidelines. *Journal of Psychiatric Practice,* 7(6), 361–376.

[36] Arean P.A., Cook B.L. (2002). Psychotherapy and combined psychotherapy/pharmacotherapy for late life depression. *Biological Psychiatry,* 52(3), 293–303.

[37] Hollon S.D., Jarrett R.B., Nierenberg A.A., Thase M.E., Trivedi M., Rush A.J. (2005). Psychotherapy and medication in the treatment of adult and geriatric depression: which monotherapy or combined treatment? *Journal of Clinical Psychiatry,* 66(4), 455–468.

[38] Wagenaar D, Colenda CC, Kreft M, Sawade J, Gardiner J, Poverejan E. (2003). Treating depression in nursing homes: practice guidelines in the real world. *J Am Osteopath Assoc.* 103(10), 465–469.

[39] Crespy SD, Van Haitsma K, Kleban M, Hann CJ. Reducing Depressive Symptoms in Nursing Home Residents: Evaluation of the Pennsylvania Depression Collaborative Quality Improvement Program. J Healthc Qual. 2016. Vol. 38, No. 6, pp. e76–e88.

[40] Agüero-Torres, H., Fratiglioni, L., Guo, Z., Viitanen, M., von Strauss, E., & Winblad, B. (1998). ''Dementia is the major cause of functional dependence in the elderly: 3-year follow-up data from a population-based study.'' Am J of Public Health 88(10): 1452–1456.

providers.[41] The BIMS data elements are currently in use in two of the PAC assessments: The MDS 3.0 in SNFs and the IRF–PAI in IRFs. The BIMS was tested in the PAC PRD where it was found to have substantial to almost perfect agreement for inter-rater reliability (kappa range of 0.71 to 0.91) when tested in all four PAC settings.[42] Clinical and subject matter expert advisors working with our data element contractor agreed that the BIMS is a feasible data element for use by PAC providers. Additionally, discussions during a TEP convened on April 6 and 7, 2016, demonstrated support for the BIMS. The Development and Maintenance of Post-Acute Care Cross-Setting Standardized Patient Assessment Data Technical Expert Panel Summary Report is available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html.*

To solicit additional feedback on the BIMS, we requested public comment from August 12 to September 12, 2016. Many commenters expressed support for use of the BIMS, noting that it is reliable, feasible to use across settings, and will provide useful information about patients and residents. These comments noted that the data collected through the BIMS will provide a clearer picture of patient or resident complexity, help with the care planning process, and be useful during care transitions and when coordinating across providers. A full report of the comments is available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html.*

Therefore, we are proposing to adopt the BIMS for use in the IRF QRP. As noted above in this section, the BIMS is already included on the IRF–PAI. For purposes of reporting for the FY 2020 IRF QRP, IRFs would be required to report these data on admission for all Medicare Part A and MA patients discharged between October 1, 2018 and December 31, 2018. Following the initial reporting year for the FY 2020 IRF QRP, subsequent years for the IRF QRP would be based on a full calendar year of such data reporting. The BIMS data element would be assessed at admission only due to the relatively stable nature of the types of cognitive function assessed by the BIMS, making it unlikely that a patient's score on this assessment would change between the start and end of the PAC stay. Assessment at discharge would introduce additional burden without improving the quality or usefulness of the data, and we believe that it is unnecessary.

We are inviting public comment on these proposals.

(ii) Confusion Assessment Method (CAM)

We are proposing that the data elements that comprise the Confusion Assessment Method (CAM) meet the definition of standardized patient assessment data for cognitive function and mental status under section 1899B(b)(1)(B)(ii) of the Act. The CAM is a six-question instrument that screens for overall cognitive impairment, as well as distinguishes delirium or reversible confusion from other types of cognitive impairment. For more information on the CAM, we refer readers to the document titled, *Proposed Specifications for IRF QRP Quality Measures and Standardized Data Elements,* available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/IRF-Quality-Reporting/IRF-Quality-Reporting-Program-Measures-Information-.html.*

The CAM was developed to identify the signs and symptoms of delirium. It results in a score that suggests whether the patient or resident should be assigned a diagnosis of delirium. Because patients and residents with multiple comorbidities receive services from PAC providers, it is important to assess delirium, which is associated with a high mortality rate and prolonged duration of stay in hospitalized older adults.[43] Assessing these signs and symptoms of delirium is clinically relevant for care planning by PAC providers.

The CAM is currently in use in two of the PAC assessments: The MDS 3.0 in SNFs and the LCDS in LTCHs. The CAM was tested in the PAC PRD where it was found to have substantial agreement for inter-rater reliability for the ''Inattention and Disorganized Thinking'' questions (kappa range of 0.70 to 0.73); and moderate agreement for the ''Altered Level of Consciousness'' question (kappa of 0.58).[44]

Clinical and subject matter expert advisors working with our data element contractor agreed that the CAM is feasible for use by PAC providers, that it assesses key aspects of cognition, and that this information about patient or resident cognition would be clinically useful both within and across PAC provider types. The CAM was also supported by a TEP that discussed and rated candidate data elements during a meeting on April 6 and 7, 2016. The Development and Maintenance of Post-Acute Care Cross-Setting Standardized Patient Assessment Data Technical Expert Panel Summary Report is available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html.* We requested public comment on the CAM from August 12 to September 12, 2016. Many commenters expressed support for use of the CAM, noting that it would provide important information for care planning and care coordination, and therefore, contribute to quality improvement. The commenters noted it is particularly helpful in distinguishing delirium and reversible confusion from other types of cognitive impairment. A full report of the comments is available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html.*

Therefore, we are proposing to add the CAM data elements to the IRF–PAI, and that IRFs would be required to report these data for the FY 2020 IRF QRP on admission and discharge for all Medicare Part A and MA patients discharged between October 1, 2018 and December 31, 2018. Following the initial reporting year for the FY 2020 IRF QRP, subsequent years for the IRF QRP would be based on a full calendar year of such data reporting.

We are inviting public comment on these proposals.

(iii) Behavioral Signs and Symptoms

We are proposing that the Behavioral Signs and Symptoms data elements meet the definition of standardized patient assessment data for cognitive

[41] RTI International. Proposed Measure Specifications for Measures Proposed in the FY 2017 LTCH QRP Proposed Rule. Research Triangle Park, NC. 2016.

[42] Gage B., Morley M., Smith L., et al. (2012). *Post-Acute Care Payment Reform Demonstration* (Final report, Volume 2 of 4). Research Triangle Park, NC: RTI International.

[43] Fick, D. M., Steis, M. R., Waller, J. L., & Inouye, S. K. (2013). ''Delirium superimposed on dementia is associated with prolonged length of stay and poor outcomes in hospitalized older adults.'' J of Hospital Med 8(9): 500–505.

[44] Gage B., Morley M., Smith L., et al. (2012). Post-Acute Care Payment Reform Demonstration (Final report, Volume 2 of 4). Research Triangle Park, NC: RTI International.

function and mental status under section 1899B(b)(1)(B)(ii) of the Act. The proposed data elements consist of three Behavioral Signs and Symptoms questions and result in three scores that categorize respondents as having or not having certain types of behavioral signs and symptoms. For more information on the Behavioral Signs and Symptoms data elements, we refer readers to the document titled, *Proposed Specifications for IRF QRP Quality Measures and Standardized Data Elements,* available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/IRF-Quality-Reporting/IRF-Quality-Reporting-Program-Measures-Information-.html.*

The questions included in the Behavioral Signs and Symptoms group assess whether the patient or resident has exhibited any behavioral symptoms that may indicate cognitive impairment or other mental health issues during the assessment period, including physical, verbal, and other disruptive or dangerous behavioral symptoms, but excluding patient wandering. Such behavioral disturbances can indicate unrecognized needs and care preferences and are associated most commonly with dementia and other cognitive impairment, and less commonly with adverse drug events, mood disorders, and other conditions. Assessing behavioral disturbances can lead to early intervention, patient- and resident-centered care planning, clinical decision support, and improved staff and patient or resident safety through early detection. Assessment and documentation of these disturbances can help inform care planning and patient transitions and provide important information about resource use.

Data elements that capture behavioral symptoms are currently included in two of the PAC assessments: The MDS 3.0 in SNFs and the OASIS–C2 in HHAs. In the MDS, each question includes four response options ranging from ''behavior not exhibited'' (0) to behavior ''occurred daily'' (3). The OASIS–C2 includes some similar data elements which record the frequency of disruptive behaviors on a 6-point scale ranging from ''never'' (0) to ''at least daily'' (5). Data elements that mirror those used in the MDS and serve the same assessment purpose were tested in post-acute providers in the PAC PRD and found to be clinically relevant, meaningful for care planning, and feasible for use in each of the four PAC settings.[45]

The proposed data elements were supported by comments from the Standardized Patient Assessment Data TEP held by our data element contractor. The TEP identified patient and resident behaviors as an important consideration for resource intensity and care planning, and affirmed the importance of the standardized assessment of patient behaviors through data elements such as those in use in the MDS. The Development and Maintenance of Post-Acute Care Cross-Setting Standardized Patient Assessment Data Technical Expert Panel Summary Report is available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html.*

Because the PAC PRD version of the Behavioral Signs and Symptoms data elements were previously tested across PAC providers, we solicited additional feedback on this version of the data elements by including these data elements in a call for public comment that was open from August 12 to September 12, 2016. Consistent with the TEP discussion on the importance of patient and resident behaviors, many commenters expressed support for use of the Behavioral Signs and Symptoms data elements, noting that they would provide useful information about patient and resident behavior at both admission and discharge and contribute to care planning related to what treatment is appropriate for the patient or resident and what resources are needed. Public comment also supported the use of highly similar MDS version of the data element in order to provide continuity with existing assessment processes in SNFs. A full report of the comments is available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html.*

Therefore, we are proposing the MDS version of the Behavioral Signs and Symptoms data elements because they focus more closely on behavioral symptoms than the OASIS data elements, and include more detailed response categories than those used in the PAC PRD version, capturing more information about the frequency of behaviors. We are proposing to add the Behavioral Signs and Symptoms data elements to the IRF–PAI, and that IRFs would be required to report these data for the FY 2020 IRF QRP on admission and discharge for all Medicare Part A and MA patients discharged between October 1, 2018 and December 31, 2018. Following the initial reporting year for the FY 2020 IRF QRP, subsequent years for the IRF QRP would be based on a full calendar year of such data reporting.

We are inviting public comment on these proposals.

(iv) Patient Health Questionnaire-2 (PHQ–2)

We are proposing that the PHQ–2 data elements meet the definition of standardized patient assessment data for cognitive function and mental status under section 1899B(b)(1)(B)(ii) of the Act. The proposed data elements consist of the PHQ–2 two-item questionnaire that assesses the cardinal criteria for depression: Depressed mood and anhedonia (inability to feel pleasure). For more information on the PHQ–2, we refer readers to the document titled, *Proposed Specifications for IRF QRP Quality Measures and Standardized Data Elements,* available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/IRF-Quality-Reporting/IRF-Quality-Reporting-Program-Measures-Information-.html.*

Depression is a common mental health condition often missed and under-recognized. Assessments of depression help PAC providers better understand the needs of their patients and residents by: Prompting further evaluation (that is, to establish a diagnosis of depression); elucidating the patient's or resident's ability to participate in therapies for conditions other than depression during their stay; and identifying appropriate ongoing treatment and support needs at the time of discharge. A PHQ–2 score beyond a predetermined threshold signals the need for additional clinical assessment in order to determine a depression diagnosis.

The proposed data elements that comprise the PHQ–2 are currently used in the OASIS–C2 for HHAs and the MDS 3.0 for SNFs (as part of the PHQ–9). The PHQ–2 data elements were tested in the PAC PRD, where they were found to have almost perfect agreement for inter-rater reliability (kappa range of

[45] Gage B., Morley M., Smith L., et al. (2012). Post-Acute Care Payment Reform Demonstration (Final report, Volume 2 of 4). Research Triangle Park, NC: RTI International.

0.84 to 0.91) when tested by all four PAC providers.[46]

Clinical and subject matter expert advisors working with our data element contractor agreed that the PHQ–2 is feasible for use in PAC, that it assesses key aspects of mental status, and that this information about patient or resident mood would be clinically useful both within and across PAC provider types. We note that both the PHQ–9 and the PHQ–2 were supported by TEP members who discussed and rated candidate data elements during a meeting on April 6 and 7, 2016. They particularly noted that the brevity of the PHQ–2 made it feasible with low burden for both assessors and PAC patients or residents. The Development and Maintenance of Post-Acute Care Cross-Setting Standardized Patient Assessment Data Technical Expert Panel Summary Report is available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html.*

To solicit additional feedback on the PHQ–2, we requested public comment from August 12 to September 12, 2016. Many commenters provided feedback on using the PHQ–2 for the assessment of mood. Overall, commenters believed that collecting these data elements across PAC provider types was appropriate, given the role that depression plays in well-being. Several commenters expressed support for an approach that would use PHQ–2 as a gateway to the longer PHQ–9 and would maintain the reduced burden on most patients and residents, as well as test administrators, which is a benefit of the PHQ–2, while ensuring that the PHQ–9, which exhibits higher specificity,[47] would be administered for patients and residents who showed signs and symptoms of depression on the PHQ–2. Specific comments are described in a full report available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html.*

Therefore, we are proposing to add the PHQ–2 data elements to the IRF–PAI, and that IRFs would be required to report these data for the FY 2020 IRF QRP on admission and discharge for all Medicare Part A and MA patients discharged between October 1, 2018 and December 31, 2018. Following the initial reporting year for the FY 2020 IRF QRP, subsequent years for the IRF QRP would be based on a full calendar year of such data reporting.

We are inviting public comment on these proposals.

(3) Special Services, Treatments, and Interventions Data

Special services, treatments, and interventions performed in PAC can have a major effect on an individual's health status, self-image, and quality of life. The assessment of these special services, treatments, and interventions in PAC is important to ensure the continuing appropriateness of care for the patients and residents receiving them, and to support care transitions from one PAC provider to another, an acute care hospital, or discharge. Accurate assessment of special services, treatments, and interventions of patients and residents served by PAC providers are expected to have a positive impact on the National Quality Strategy's domains of patient and family engagement, patient safety, care coordination, clinical process/effectiveness, and efficient use of healthcare resources.

For example, standardized assessment of special services, treatments, and interventions used in PAC can promote patient and resident safety through appropriate care planning (for example, mitigating risks such as infection or pulmonary embolism associated with central intravenous access), and identifying life-sustaining treatments that must be continued, such as mechanical ventilation, dialysis, suctioning, and chemotherapy, at the time of discharge or transfer. Standardized assessment of these data elements will enable or support: Clinical decision-making and early clinical intervention; person-centered, high quality care through, for example, facilitating better care continuity and coordination; better data exchange and interoperability between settings; and longitudinal outcome analysis. Hence, reliable data elements assessing special services, treatments, and interventions are needed to initiate a management program that can optimize a patient or resident's prognosis and reduce the possibility of adverse events.

We are proposing 15 special services, treatments, and interventions as presented below in this section grouped by cancer treatments, respiratory treatments, other treatments, and nutritional approaches. A TEP convened by our data element contractor provided input on the 15 data elements for Special Services, Treatments, and Interventions. This TEP, held on January 5 and 6, 2017, opined that these data elements are appropriate for standardization because they would provide useful clinical information to inform care planning and care coordination. The TEP affirmed that assessment of these services and interventions is standard clinical practice, and that the collection of these data by means of a list and checkbox format would conform to common workflow for PAC providers. A full report of the TEP discussion is available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html.*

(i) Cancer Treatment: Chemotherapy (IV, Oral, Other)

We are proposing that the Chemotherapy (IV, Oral, Other) data elements meet the definition of standardized patient assessment data for special services, treatments, and interventions under section 1899B(b)(1)(B)(iii) of the Act. The proposed data elements consist of the principal Chemotherapy data element and three sub-elements: IV Chemotherapy, Oral Chemotherapy, and Other. For more information on the Chemotherapy data element, we refer readers to the document titled, *Proposed Specifications for IRF QRP Quality Measures and Standardized Data Elements,* available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/IRF-Quality-Reporting/IRF-Quality-Reporting-Program-Measures-Information-.html.*

Chemotherapy is a type of cancer treatment that uses drugs to destroy cancer cells. It is sometimes used when a patient has a malignancy (cancer), which is a serious, often life-threatening or life-limiting condition. Both intravenous (IV) and oral chemotherapy have serious side effects, including nausea/vomiting, extreme fatigue, risk of infection due to a suppressed immune system, anemia, and an increased risk of bleeding due to low platelet counts. Oral chemotherapy can be as potent as chemotherapy given by IV, but can be significantly more

[46] Gage B., Smith L., Ross J. et al. (2012). The Development and Testing of the Continuity Assessment Record and Evaluation (CARE) Item Set (Final Report on Reliability Testing, Volume 2 of 3). Research Triangle Park, NC: RTI International.

[47] Arroll B, Goodyear-Smith F, Crengle S, Gunn J, Kerse N, Fishman T, et al. Validation of PHQ–2 and PHQ–9 to screen for major depression in the primary care population. *Annals of family medicine.* 2010;8(4):348–53. doi: 10.1370/afm.1139 pmid:20644190; PubMed Central PMCID: PMC2906530.

convenient and less resource-intensive to administer. Because of the toxicity of these agents, special care must be exercised in handling and transporting chemotherapy drugs. IV chemotherapy may be given by peripheral IV, but is more commonly given via an indwelling central line, which raises the risk of bloodstream infections. Given the significant burden of malignancy, the resource intensity of administering chemotherapy, and the side effects and potential complications of these highly-toxic medications, assessing the receipt of chemotherapy is important in the PAC setting for care planning and determining resource use.

The need for chemotherapy predicts resource intensity, both because of the complexity of administering these potent, toxic drug combinations under specific protocols, and because of what the need for chemotherapy signals about the patient's underlying medical condition. Furthermore, the resource intensity of IV chemotherapy is higher than for oral chemotherapy, as the protocols for administration and the care of the central line (if present) require significant resources.

The Chemotherapy (IV, Oral, Other) data elements consist of a principal data element and three sub-elements: IV chemotherapy, which is generally resource-intensive; oral chemotherapy, which is less invasive and generally less intensive with regard to administration protocols; and a third category provided to enable the capture of other less common chemotherapeutic approaches. This third category is potentially associated with higher risks and is more resource intensive due to delivery by other routes (for example, intraventricular or intrathecal).

The principal Chemotherapy data element is currently in use in the MDS 3.0. One proposed sub-element, IV Chemotherapy, was tested in the PAC PRD and found feasible for use in each of the four PAC settings. We solicited public comment on IV Chemotherapy from August 12 to September 12, 2016. Several commenters provided support for the data element and suggested it be included as standardized patient assessment data. Commenters stated that assessing the use of chemotherapy services is relevant to share across the care continuum to facilitate care coordination and care transitions and noted the validity of the data element. Commenters also noted the importance of capturing all types of chemotherapy, regardless of route, and stated that collecting data only on patients and residents who received chemotherapy by IV would limit the usefulness of this standardized data element. A full report of the comments is available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html.*

As a result of the comments and input received from clinical and subject matter experts, we are proposing a principal Chemotherapy data element with three sub-elements, including Oral and Other for standardization. Our data element contractor then presented the proposed data elements to the Standardized Patient Assessment Data TEP on January 5 and 6, 2017, who supported these data elements for standardization. A full report of the TEP discussion is available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html.*

Therefore, we are proposing that the Chemotherapy (IV, Oral, Other) data elements with a principal data element and three sub-elements meet the definition of standardized patient assessment data for special services, treatments, and interventions under section 1899B(b)(1)(B)(iii) of the Act. We are proposing to add the Chemotherapy (IV, Oral, Other) data elements to the IRF–PAI, and that IRFs would be required to report these data for the FY 2020 IRF QRP on admission and discharge for all Medicare Part A and MA patients discharged between October 1, 2018 and December 31, 2018. Following the initial reporting year for the FY 2020 IRF QRP, subsequent years for the IRF QRP would be based on a full calendar year of such data reporting.

We are inviting public comment on these proposals.

(ii) Cancer Treatment: Radiation

We are proposing that the Radiation data element meets the definition of standardized patient assessment data for special services, treatments, and interventions under section 1899B(b)(1)(B)(iii) of the Act. The proposed data element consists of the single Radiation data element. For more information on the Radiation data element, we refer readers to the document titled, *Proposed Specifications for IRF QRP Quality Measures and Standardized Data Elements,* available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/IRF-Quality-Reporting/IRF-Quality-Reporting-Program-Measures-Information-.html.*

Radiation is a type of cancer treatment that uses high-energy radioactivity to stop cancer by damaging cancer cell DNA, but it can also damage normal cells. Radiation is an important therapy for particular types of cancer, and the resource utilization is high, with frequent radiation sessions required, often daily for a period of several weeks. Assessing whether a patient or resident is receiving radiation therapy is important to determine resource utilization because PAC patients and residents will need to be transported to and from radiation treatments, and monitored and treated for side effects after receiving this intervention. Therefore, assessing the receipt of radiation therapy, which would compete with other care processes given the time burden, would be important for care planning and care coordination by PAC providers.

The Radiation data element is currently in use in the MDS 3.0. This data element was not tested in the PAC PRD. However, public comment and other expert input on the Radiation data element supported its importance and clinical usefulness for patients in PAC settings, due to the side effects and consequences of radiation treatment on patients that need to be considered in care planning and care transitions. To solicit additional feedback on the Radiation data element we are proposing, we requested public comment from August 12 to September 12, 2016. Several commenters provided support for the data element, noting the relevance of this data element to facilitating care coordination and supporting care transitions, the feasibility of the item, and the potential for it to improve quality. A full report of the comments is available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html.*

The proposed data element was presented to and supported by the TEP held by our data element contractor on January 5 and 6, 2017, which opined that Radiation was important corollary information about cancer treatment to collect alongside Chemotherapy (IV, Oral, Other), and that, because capturing this information is a customary part of clinical practice, the proposed data element would be feasible, reliable, and easily incorporated into existing workflow.

Therefore, we are proposing that the Radiation data element meets the definition of standardized patient assessment data for special services,

treatments, and interventions under section 1899B(b)(1)(B)(iii) of the Act. We are proposing to add the Radiation data element to the IRF–PAI, and that IRFs would be required to report these data for the FY 2020 IRF QRP on admission and discharge for all Medicare Part A and MA patients discharged between October 1, 2018 and December 31, 2018. Following the initial reporting year for the FY 2020 IRF QRP, subsequent years for the IRF QRP would be based on a full calendar year of such data reporting.

We are inviting public comment on these proposals.

(iii) Respiratory Treatment: Oxygen Therapy (Continuous, Intermittent)

We are proposing that the Oxygen Therapy (Continuous, Intermittent) data elements meet the definition of standardized patient assessment data for special services, treatments, and interventions under section 1899B(b)(1)(B)(iii) of the Act. The proposed data elements consist of the principal Oxygen data element and two sub-elements, ''Continuous'' (whether the oxygen was delivered continuously, typically defined as ≧14 hours per day), or ''Intermittent.'' For more information on the Oxygen Therapy (Continuous, Intermittent) data elements, we refer readers to the document titled, *Proposed Specifications for IRF QRP Quality Measures and Standardized Data Elements,* available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/IRF-Quality-Reporting/IRF-Quality-Reporting-Program-Measures-Information-.html.*

Oxygen therapy provides a patient or resident with extra oxygen when medical conditions such as chronic obstructive pulmonary disease, pneumonia, or severe asthma prevent the patient or resident from getting enough oxygen from breathing. Oxygen administration is a resource-intensive intervention, as it requires specialized equipment such as a source of oxygen, delivery systems (for example, oxygen concentrator, liquid oxygen containers, and high-pressure systems), the patient interface (for example, nasal cannula or mask), and other accessories (for example, regulators, filters, tubing). These data elements capture patient or resident use of two types of oxygen therapy (continuous and intermittent) which are reflective of intensity of care needs, including the level of monitoring and bedside care required. Assessing the receipt of this service is important for care planning and resource use for PAC providers.

The proposed data elements were developed based on similar data elements that assess oxygen therapy, currently in use in the MDS 3.0 (''Oxygen Therapy'') and OASIS–C2 (''Oxygen (intermittent or continuous)''), and a data element tested in the PAC PRD that focused on intensive oxygen therapy (''High O2 Concentration Delivery System with FiO2 > 40%'').

As a result of input from expert advisors, we solicited public comment on the single data element, Oxygen (inclusive of intermittent and continuous oxygen use), from August 12 to September 12, 2016. Several commenters supported the importance of the Oxygen data element, noting feasibility of this item in PAC, and the relevance of it to facilitating care coordination and supporting care transitions, but suggesting that the extent of oxygen use be documented. A full report of the comments is available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html.*

As a result of public comment and input from expert advisors about the importance and clinical usefulness of documenting the extent of oxygen use, we expanded the single data element to include two sub-elements, intermittent and continuous.

Therefore, we are proposing that the Oxygen Therapy (Continuous, Intermittent) data elements with a principal data element and two sub-elements meet the definition of standardized patient assessment data for special services, treatments, and interventions under section 1899B(b)(1)(B)(iii) of the Act. We are proposing to add the Oxygen Therapy (Continuous, Intermittent) data elements to the IRF–PAI, and that IRFs would be required to report these data for the FY 2020 IRF QRP on admission and discharge for all Medicare Part A and MA patients discharged between October 1, 2018 and December 31, 2018. Following the initial reporting year for the FY 2020 IRF QRP, subsequent years for the IRF QRP would be based on a full calendar year of such data reporting.

We are inviting public comment on these proposals.

(iv) Respiratory Treatment: Suctioning (Scheduled, as Needed)

We are proposing that the Suctioning (Scheduled, As needed) data elements meet the definition of standardized patient assessment data element for special services, treatments, and interventions under section 1899B(b)(1)(B)(iii) of the Act. The proposed data elements consist of the principal Suctioning data element, and two sub-elements, ''Scheduled'' and ''As needed.'' These sub-elements capture two types of suctioning. ''Scheduled'' indicates suctioning based on a specific frequency, such as every hour; ''As needed'' means suctioning only when indicated. For more information on the Suctioning (Scheduled, As needed) data elements, we refer readers to the document titled, *Proposed Specifications for IRF QRP Quality Measures and Standardized Data Elements,* available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/IRF-Quality-Reporting/IRF-Quality-Reporting-Program-Measures-Information-.html.*

Suctioning is a process used to clear secretions from the airway when a person cannot clear those secretions on his or her own. It is done by aspirating secretions through a catheter connected to a suction source. Types of suctioning include oropharyngeal and nasopharyngeal suctioning, nasotracheal suctioning, and suctioning through an artificial airway such as a tracheostomy tube. Oropharyngeal and nasopharyngeal suctioning are a key part of many patients' care plans, both to prevent the accumulation of secretions than can lead to aspiration pneumonias (a common condition in patients with inadequate gag reflexes), and to relieve obstructions from mucus plugging during an acute or chronic respiratory infection, which often lead to desaturations and increased respiratory effort. Suctioning can be done on a scheduled basis if the patient is judged to clinically benefit from regular interventions; or can be done as needed, such as when secretions become so prominent that gurgling or choking is noted, or a sudden desaturation occurs from a mucus plug. As suctioning is generally performed by a care provider rather than independently, this intervention can be quite resource-intensive if it occurs every hour, for example, rather than once a shift. It also signifies an underlying medical condition that prevents the patient from clearing his/her secretions effectively (such as after a stroke, or during an acute respiratory infection). Generally, suctioning is necessary to ensure that the airway is clear of secretions which can inhibit successful oxygenation of the individual. The intent of suctioning is to maintain a patent airway, the loss of which can lead to death, or complications associated with hypoxia.

The proposed data elements are based on an item currently in use in the MDS 3.0 (''Suctioning'' without the two sub-elements), and data elements tested in the PAC PRD that focused on the frequency of suctioning required for patients with tracheostomies (''Trach Tube with Suctioning: Specify most intensive frequency of suctioning during stay [Every __hours]'').

Clinical and subject matter expert advisors working with our data element contractor agreed that the proposed Suctioning (Scheduled, As needed) data elements are feasible for use in PAC, and that they indicate important treatment that would be clinically useful to capture both within and across PAC providers. We solicited public comment on the suctioning data element currently included in the MDS 3.0 between August 12 and September 12, 2016. Several commenters wrote in support of this data element, noting feasibility of this item in PAC, and the relevance of this data element to facilitating care coordination and supporting care transitions. We also received comments suggesting that we examine the frequency of suctioning in order to better understand the use of staff time, the impact on a patient or resident's capacity to speak and swallow, and intensity of care required. Based on these comments, we decided to add two sub-elements (scheduled and as needed) to the suctioning element. The proposed data elements, Suctioning (Scheduled, As needed) includes both the principal suctioning data element that is included on the MDS 3.0 and two sub-elements, ''scheduled'' and ''as needed.'' A full report of the comments is available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html.*

A TEP convened by the data element contractor provided input on the proposed data elements. This TEP, held on January 5 and 6, 2017, opined that these data elements are appropriate for standardization because they would provide useful clinical information to inform care planning and care coordination. The TEP affirmed that assessment of these services and interventions is standard clinical practice. A full report of the TEP discussion is available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html.*

Therefore, we are proposing that the Suctioning (Scheduled, As needed) data elements with a principal data element and two sub-elements meet the definition of standardized patient assessment data for special services, treatments, and interventions under section 1899B(b)(1)(B)(iii) of the Act. We are proposing to add the Suctioning (Scheduled, As needed) data elements to the IRF–PAI, and that IRFs would be required to report these data for the FY 2020 IRF QRP on admission and discharge for all Medicare Part A and MA patients discharged between October 1, 2018 and December 31, 2018. Following the initial reporting year for the FY 2020 IRF QRP, subsequent years for the IRF QRP would be based on a full calendar year of such data reporting.

We are inviting public comment on these proposals.

(v) Respiratory Treatment: Tracheostomy Care

We are proposing that the Tracheostomy Care data element meets the definition of standardized patient assessment data for special services, treatments, and interventions under section 1899B(b)(1)(B)(iii) of the Act. The proposed data element consists of the single Tracheostomy Care data element. For more information on the Tracheostomy Care data element, we refer readers to the document titled, *Proposed Specifications for IRF QRP Quality Measures and Standardized Data Elements,* available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/IRF-Quality-Reporting/IRF-Quality-Reporting-Program-Measures-Information-.html.*

A tracheostomy provides an air passage to help a patient or resident breathe when the usual route for breathing is obstructed or impaired. Generally, in all of these cases, suctioning is necessary to ensure that the tracheostomy is clear of secretions which can inhibit successful oxygenation of the individual. Often, individuals with tracheostomies are also receiving supplemental oxygenation. The presence of a tracheostomy, albeit permanent or temporary, warrants careful monitoring and immediate intervention if the tracheostomy becomes occluded or in the case of a temporary tracheostomy, the device used becomes dislodged. While in rare cases the presence of a tracheostomy is not associated with increased care demands (and in some of those instances, the care of the ostomy is performed by the patient) in general the presence of such as device is associated with increased patient risk, and clinical care services will necessarily include close monitoring to ensure that no life-threatening events occur as a result of the tracheostomy, often considered part of the patient's life line. In addition, tracheostomy care, which primarily consists of cleansing, dressing changes, and replacement of the tracheostomy cannula (tube), is also a critical part of the care plan. Regular cleansing is important to prevent infection such as pneumonia and to prevent any occlusions with which there are risks for inadequate oxygenation.

The proposed data element is currently in use in the MDS 3.0 (''Tracheostomy care''). Data elements (''Trach Tube with Suctioning'') that were tested in the PAC PRD included an equivalent principal data element on the presence of a tracheostomy. This data element was found feasible for use in each of the four PAC settings as the data collection aligned with usual work flow.

Clinical and subject matter expert advisors working with our data element contractor agreed that the Tracheostomy Care data element is feasible for use in PAC and that it assesses an important treatment that would be clinically useful both within and across PAC provider types.

We solicited public comment on this data element from August 12 to September 12, 2016. Several commenters wrote in support of this data element, noting the feasibility of this item in PAC, and the relevance of this data element to facilitating care coordination and supporting care transitions. A full report of the comments is available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html.*

A TEP convened by the data element contractor provided input on the proposed data elements. This TEP, held on January 5 and 6, 2017, opined that these data elements are appropriate for standardization because they would provide useful clinical information to inform care planning and care coordination. The TEP affirmed that assessment of these services and interventions is standard clinical practice. A full report of the TEP discussion is available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html.*

Therefore, we are proposing that the Tracheostomy Care data element meets

the definition of standardized patient assessment data for special services, treatments, and interventions under section 1899B(b)(1)(B)(iii) of the Act. We are proposing to add the Tracheostomy Care data element to the IRF–PAI, and that IRFs would be required to report these data for the FY 2020 IRF QRP on admission and discharge for all Medicare Part A and MA patients discharged between October 1, 2018 and December 31, 2018. Following the initial reporting year for the FY 2020 IRF QRP, subsequent years for the IRF QRP would be based on a full calendar year of such data reporting.

We are inviting public comment on these proposals.

(vi) Respiratory Treatment: Non-Invasive Mechanical Ventilator (BiPAP, CPAP)

We are proposing that the Non-invasive Mechanical Ventilator (Bilevel Positive Airway Pressure [BiPAP], Continuous Positive Airway Pressure [CPAP]) data elements meet the definition of standardized patient assessment data for special services, treatments, and interventions under section 1899B(b)(1)(B)(iii) of the Act. The proposed data elements consist of the principal Non-invasive Mechanical Ventilator data element and two sub-elements, BiPAP and CPAP. For more information on the Non-invasive Mechanical Ventilator (BiPAP, CPAP) data element, we refer readers to the document titled, *Proposed Specifications for IRF QRP Quality Measures and Standardized Data Elements,* available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/IRF-Quality-Reporting/IRF-Quality-Reporting-Program-Measures-Information-.html.*

BiPAP and CPAP are respiratory support devices that prevent the airways from closing by delivering slightly pressurized air via electronic cycling throughout the breathing cycle (Bilevel PAP, referred to as BiPAP) or through a mask continuously (Continuous PAP, referred to as CPAP). Assessment of non-invasive mechanical ventilation is important in care planning, as both CPAP and BiPAP are resource-intensive (although less so than invasive mechanical ventilation) and signify underlying medical conditions about the patient or resident who requires the use of this intervention. Particularly when used in settings of acute illness or progressive respiratory decline, additional staff (for example, respiratory therapists) are required to monitor and adjust the CPAP and BiPAP settings and the patient or resident may require more nursing resources.

Data elements that assess BiPAP and CPAP are currently included on the OASIS–C2 for HHAs (''Continuous/Bi-level positive airway pressure''), LCDS for the LTCH setting (''Non-invasive Ventilator (BIPAP, CPAP)''), and the MDS 3.0 for the SNF setting (''BiPAP/CPAP''). A data element that focused on CPAP was tested across the four PAC providers in the PAC–PRD study and found to be feasible for standardization. All of these data elements assess BiPAP or CPAP with a single check box, not separately.

Clinical and subject matter expert advisors working with our data element contractor agreed that the standardized assessment of Non-invasive Mechanical Ventilator (BiPAP, CPAP) data elements would be feasible for use in PAC, and assess an important treatment that would be clinically useful both within and across PAC provider types.

To solicit additional feedback on the form of the Non-invasive Mechanical Ventilator (BiPAP, CPAP) data elements best suited for standardization, we requested public comment on a single data element, BiPAP/CPAP, equivalent (but for labeling) to what is currently in use on the MDS, OASIS, and LCDS, from August 12 to September 12, 2016. Several commenters wrote in support of this data element, noting the feasibility of these items in PAC, and the relevance of these data elements for facilitating care coordination and supporting care transitions. In addition, there was support in the public comment responses for separating out BiPAP and CPAP as distinct sub-elements, as they are therapies used for different types of patients and residents. A full report of the comments is available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html.*

A TEP convened by the data element contractor provided input on the proposed data elements. This TEP, held on January 5 and 6, 2017, opined that these data elements are appropriate for standardization because they would provide useful clinical information to inform care planning and care coordination. The TEP affirmed that assessment of these services and interventions is standard clinical practice. A full report of the TEP discussion is available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html.*

Therefore, we are proposing that the Non-invasive Mechanical Ventilator (BiPAP, CPAP) data elements with a principal data element and two sub-elements meet the definition of standardized patient assessment data for special services, treatments, and interventions under section 1899B(b)(1)(B)(iii) of the Act. We are proposing that the Non-invasive Mechanical Ventilator (BiPAP, CPAP) data elements would be added to the IRF–PAI, and that IRFs would be required to report these data for the FY 2020 IRF QRP on admission and discharge for all Medicare Part A and MA patients discharged between October 1, 2018 and December 31, 2018. Following the initial reporting year for the FY 2020 IRF QRP, subsequent years for the IRF QRP would be based on a full calendar year of such data reporting.

We are inviting public comment on these proposals.

(vii) Respiratory Treatment: Invasive Mechanical Ventilator

We are proposing that the Invasive Mechanical Ventilator data element meets the definition of standardized patient assessment data for special services, treatments, and interventions under section 1899B(b)(1)(B)(iii) of the Act. The proposed data element consists of a single Invasive Mechanical Ventilator data element. For more information on the Invasive Mechanical Ventilator data element, we refer readers to the document titled, *Proposed Specifications for IRF QRP Quality Measures and Standardized Data Elements,* available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/IRF-Quality-Reporting/IRF-Quality-Reporting-Program-Measures-Information-.html.*

Invasive mechanical ventilation includes ventilators and respirators that ventilate the patient through a tube that extends via the oral airway into the pulmonary region or through a surgical opening directly into the trachea. Thus, assessment of invasive mechanical ventilation is important in care planning and risk mitigation. Ventilation in this manner is a resource-intensive therapy associated with life-threatening conditions without which the patient or resident would not survive. However, ventilator use has inherent risks requiring close monitoring. Failure to adequately care for the patient or resident who is ventilator dependent can lead to iatrogenic events such as death, pneumonia and sepsis. Mechanical ventilation further signifies

the complexity of the patient's underlying medical and or surgical condition. Of note, invasive mechanical ventilation is associated with high daily and aggregate costs.[48]

Data elements that capture invasive mechanical ventilation, but vary in their level of specificity, are currently in use in the MDS 3.0 (''Ventilator or respirator'') and LCDS (''Invasive Mechanical Ventilator: Weaning'' and ''Invasive Mechanical Ventilator: Non-weaning''), and related data elements that assess invasive ventilator use and weaning status were tested in the PAC PRD (''Ventilator—Weaning'' and ''Ventilator—Non-Weaning'') and found feasible for use in each of the four PAC settings.

Clinical and subject matter expert advisors working with our data element contractor agreed that assessing Invasive Mechanical Ventilator use is feasible in PAC, and would be clinically useful both within and across PAC providers.

To solicit additional feedback on the form of a data element on this topic that would be appropriate for standardization, data element that assess invasive ventilator use and weaning status that were tested in the PAC PRD (''Ventilator—Weaning'' and ''Ventilator—Non-Weaning'') were included in a call for public comment that was open from August 12 to September 12, 2016 because they were being considered for standardization. Several commenters wrote in support of these data elements, highlighting the importance of this information in supporting care coordination and care transitions. Some commenters expressed concern about the appropriateness for standardization, given the prevalence of ventilator weaning across PAC providers; the timing of administration; how weaning is defined; and how weaning status in particular relates to quality of care. These comments guided the decision to propose a single data element focused on current use of invasive mechanical ventilation only, and does not attempt to capture weaning status. A full report of the comments is available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html.*

A TEP convened by the data element contractor provided input on the proposed data elements. This TEP, held on January 5 and 6, 2017, opined that these data elements are appropriate for standardization because they would provide useful clinical information to inform care planning and care coordination. The TEP affirmed that assessment of these services and interventions is standard clinical practice. A full report of the TEP discussion is available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html.*

Therefore, we are proposing that the Invasive Mechanical Ventilator data element that assesses the use of an invasive mechanical ventilator, but does not assess weaning status, meets the definition of standardized patient assessment data for special services, treatments, and interventions under section 1899B(b)(1)(B)(iii) of the Act. We are proposing to add the Invasive Mechanical Ventilator data element to the IRF–PAI, and that IRFs would be required to report these data for the FY 2020 IRF QRP on admission and discharge for all Medicare Part A and MA patients discharged between October 1, 2018 and December 31, 2018. Following the initial reporting year for the FY 2020 IRF QRP, subsequent years for the IRF QRP would be based on a full calendar year of such data reporting.

We are inviting public comment on these proposals.

(viii) Other Treatment: Intravenous (IV) Medications (Antibiotics, Anticoagulation, Other)

We are proposing that the IV Medications (Antibiotics, Anticoagulation, Other) data elements meet the definition of standardized patient assessment data for special services, treatments, and interventions under section 1899B(b)(1)(B)(iii) of the Act. The proposed data elements consist of the principal IV Medications data element and three sub-elements, Antibiotics, Anticoagulation, and Other. For more information on the IV Medications (Antibiotics, Anticoagulation, Other) data element, we refer readers to the document titled, *Proposed Specifications for IRF QRP Quality Measures and Standardized Data Elements,* available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/IRF-Quality-Reporting/IRF-Quality-Reporting-Program-Measures-Information-.html.*

IV medications are solutions of a specific medication (for example, antibiotics, anticoagulants) administered directly into the venous circulation via a syringe or intravenous catheter (tube). IV medications are administered via intravenous push (bolus), single, intermittent, or continuous infusion through a tube placed into the vein (for example, commonly referred to as central, midline, or peripheral ports). Further, IV medications are more resource intensive to administer than oral medications, and signify a higher patient complexity (and often higher severity of illness).

The clinical indications for each of the sub-elements of the IV Medication data element (Antibiotics, Anticoagulants, and Other) are very different. IV antibiotics are used for severe infections when: (1) The bioavailability of the oral form of the medication would be inadequate to kill the pathogen; (2) an oral form of the medication does not exist; or (3) the patient is unable to take the medication by mouth. IV anticoagulants refer to anti-clotting medications (that is, ''blood thinners''), often used for the prevention and treatment of deep vein thrombosis and other thromboembolic complications. IV anticoagulants are commonly used in patients with limited mobility (either chronically or acutely, in the post-operative setting), who are at risk of deep vein thrombosis, or patients with certain cardiac arrhythmias such as atrial fibrillation. The indications, risks, and benefits of each of these classes of IV medications are distinct, making it important to assess each separately in PAC. Knowing whether or not patients are receiving IV medication and the type of medication provided by each PAC provider will improve quality of care.

The principal IV Medication data element is currently in use on the MDS 3.0 and there is a related data element in OASIS–C2 that collects information on Intravenous and Infusion Therapies. One sub-element of the proposed data elements, IV Anti-coagulants, and two other data elements related to IV therapy (IV Vasoactive Medications and IV Chemotherapy), were tested in the PAC PRD and found feasible for use in that the data collection aligned with usual work flow in each of the four PAC settings, demonstrating the feasibility of collecting IV medication information, including type of IV medication, through similar data elements in these settings.

Clinical and subject matter expert advisors working with our data element contractor agreed that standardized collection of information on medications, including IV medications, would be feasible in PAC, and assess an important treatment that would be

[48] Wunsch, H., Linde-Zwirble, W. T., Angus, D. C., Hartman, M. E., Milbrandt, E. B., & Kahn, J. M. (2010). ''The epidemiology of mechanical ventilation use in the United States.'' Critical Care Med 38(10): 1947–1953.

clinically useful both within and across PAC provider types.

We solicited public comment on a related data element, Vasoactive Medications, from August 12 to September 12, 2016. While commenters supported this data element with one noting the importance of this data element in supporting care transitions, others criticized the need for collecting specifically on Vasoactive Medications, giving feedback that the data element was too narrowly focused. Additionally, comment received indicated that the clinical significance of vasoactive medications administration alone was not high enough in PAC to merit mandated assessment, noting that related and more useful information could be captured in an item that assessed all IV medication use.

Overall, public comment indicated the importance of including the additional check box data elements to distinguish particular classes of medications. A full report of the comments is available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html.*

A TEP convened by the data element contractor provided input on the proposed data elements. This TEP, held on January 5 and 6, 2017, opined that these data elements are appropriate for standardization because they would provide useful clinical information to inform care planning and care coordination. The TEP affirmed that assessment of these services and interventions is standard clinical practice. A full report of the TEP discussion is available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html.*

Therefore, we are proposing that the IV Medications (Antibiotics, Anticoagulation, Other) data elements with a principal data element and three sub-elements meet the definition of standardized patient assessment data for special services, treatments, and interventions under section 1899B(b)(1)(B)(iii) of the Act. We are proposing to add the IV Medications (Antibiotics, Anticoagulation, Other) data elements to the IRF–PAI, and that IRFs would be required to report these data for the FY 2020 IRF QRP on admission and discharge for all Medicare Part A and MA patients discharged between October 1, 2018 and December 31, 2018. Following the initial reporting year for the FY 2020 IRF QRP, subsequent years for the IRF QRP would be based on a full calendar year of such data reporting.

We are inviting public comment on these proposals.

(ix) Other Treatment: Transfusions

We are proposing that the Transfusions data element meets the definition of standardized patient assessment data element for special services, treatments, and interventions under section 1899B(b)(1)(B)(iii) of the Act. The proposed data element consists of the single Transfusions data element. For more information on the Transfusions data element, we refer readers to the document titled, *Proposed Specifications for IRF QRP Quality Measures and Standardized Data Elements,* available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/IRF-Quality-Reporting/IRF-Quality-Reporting-Program-Measures-Information-.html.*

Transfusion refers to introducing blood, blood products, or other fluid into the circulatory system of a person. Blood transfusions are based on specific protocols, with multiple safety checks and monitoring required during and after the infusion in case of adverse events. Coordination with the provider's blood bank is necessary, as well as documentation by clinical staff to ensure compliance with regulatory requirements. In addition, the need for transfusions signifies underlying patient complexity that is likely to require care coordination and patient monitoring, and impacts planning for transitions of care, as transfusions are not performed by all PAC providers.

The proposed data element was selected from three existing assessment items on transfusions and related services, currently in use in the MDS 3.0 (''Transfusions'') and OASIS–C2 (''Intravenous or Infusion Therapy''), and a data element tested in the PAC PRD (''Blood Transfusions''), that was found feasible for use in each of the four PAC settings. We chose to propose the MDS version because of its greater level of specificity over the OASIS–C2 data element. This selection was informed by expert advisors and reviewed and supported in the proposed form by the Standardized Patient Assessment Data TEP held by our data element contractor on January 5 and 6, 2017. A full report of the TEP discussion is available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html.*

Therefore, we are proposing that the Transfusions data element that is currently in use in the MDS meets the definition of standardized patient assessment data for special services, treatments, and interventions under section 1899B(b)(1)(B)(iii) of the Act. We are proposing to add the Transfusions data element to the IRF–PAI, and that IRFs would be required to report these data for the FY 2020 IRF QRP on admission and discharge for all Medicare Part A and MA patients discharged between October 1, 2018 and December 31, 2018. Following the initial reporting year for the FY 2020 IRF QRP, subsequent years for the IRF QRP would be based on a full calendar year of such data reporting.

We are inviting public comment on these proposals.

(x) Other Treatment: Dialysis (Hemodialysis, Peritoneal Dialysis)

We are proposing that the Dialysis (Hemodialysis, Peritoneal dialysis) data elements meet the definition of standardized patient assessment data for special services, treatments, and interventions under section 1899B(b)(1)(B)(iii) of the Act. The proposed data elements consist of the principal Dialysis data element and two sub-elements, Hemodialysis and Peritoneal dialysis. For more information on the Dialysis (Hemodialysis, Peritoneal dialysis) data elements, we refer readers to the document titled, *Proposed Specifications for IRF QRP Quality Measures and Standardized Data Elements,* available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/IRF-Quality-Reporting/IRF-Quality-Reporting-Program-Measures-Information-.html.*

Dialysis is a treatment primarily used to provide replacement for lost kidney function. Both forms of dialysis (hemodialysis and peritoneal dialysis) are resource intensive, not only during the actual dialysis process but before, during and following. Patients and residents who need and undergo dialysis procedures are at high risk for physiologic and hemodynamic instability from fluid shifts and electrolyte disturbances as well as infections that can lead to sepsis. Further, patients or residents receiving hemodialysis are often transported to a different facility, or at a minimum, to a different location in the same facility. Close monitoring for fluid shifts, blood pressure abnormalities, and other adverse effects is required prior to,

during and following each dialysis session. Nursing staff typically perform peritoneal dialysis at the bedside, and as with hemodialysis, close monitoring is required.

The principal Dialysis data element is currently included on the MDS 3.0 and the LCDS v3.0 and assesses the overall use of dialysis. The sub-elements for Hemodialysis and Peritoneal dialysis were tested across the four PAC providers in the PAC PRD study, and found to be feasible for standardization. Clinical and subject matter expert advisors working with our data element contractor opined that the standardized assessment of dialysis is feasible in PAC, and that it assesses an important treatment that would be clinically useful both within and across PAC providers. As the results of expert and public feedback, described below, we decided to propose a data element that includes both the principal Dialysis data element and the two sub-elements (hemodialysis and peritoneal dialysis).

The Hemodialysis data element, which was tested in the PAC PRD, was included in a call for public comment that was open from August 12 to September 12, 2016. Commenters supported the assessment of hemodialysis and recommended that the data element be expanded to include peritoneal dialysis. Several commenters supported the Hemodialysis data element, noting the relevance of this information for sharing across the care continuum to facilitate care coordination and care transitions, the potential for this data element to be used to improve quality, and the feasibility for use in PAC. In addition, we received comment that the item would be useful in improving patient and resident transitions of care. Several commenters also stated that peritoneal dialysis should be included in a standardized data element on dialysis and recommended collecting information on peritoneal dialysis in addition to hemodialysis. The rationale for including peritoneal dialysis from commenters included the fact that patients and residents receiving peritoneal dialysis will have different needs at post-acute discharge compared to those receiving hemodialysis or not having any dialysis. Based on these comments, the Hemodialysis data element was expanded to include a principal Dialysis data element and two sub-elements, hemodialysis and peritoneal dialysis; these are the same two data elements that were tested in the PAC PRD. This expanded version, Dialysis (Hemodialysis, Peritoneal dialysis), are the data elements being proposed. A full report of the comments is available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html.*

We note that the Dialysis (Hemodialysis, Peritoneal dialysis) data elements were also supported by the TEP that discussed candidate data elements for Special Services, Treatments, and Interventions during a meeting on January 5 and 6, 2017. A full report of the TEP discussion is available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html.*

Therefore, we are proposing that the Dialysis (Hemodialysis, Peritoneal dialysis) data elements with a principal data element and two sub-elements meet the definition of standardized patient assessment data for special services, treatments, and interventions under section 1899B(b)(1)(B)(iii) of the Act. We are proposing that the Dialysis (Hemodialysis, Peritoneal dialysis) data elements would be added to the IRF–PAI, and that IRFs would be required to report these data for the FY 2020 IRF QRP on admission and discharge for all Medicare Part A and MA patients discharged between October 1, 2018 and December 31, 2018. Following the initial reporting year for the FY 2020 IRF QRP, subsequent years for the IRF QRP would be based on a full calendar year of such data reporting.

We are inviting public comment on these proposals.

(xi) Other Treatment: Intravenous (IV) Access (Peripheral IV, Midline, Central Line, Other)

We are proposing that the IV Access (Peripheral IV, Midline, Central line, Other) data elements meet the definition of standardized patient assessment data element for special services, treatments, and interventions under section 1899B(b)(1)(B)(iii) of the Act. The proposed data elements consist of the principal IV Access data element and four sub-elements, Peripheral IV, Midline, Central line, and Other. For more information on the IV Access data element, we refer readers to the document titled, *Proposed Specifications for IRF QRP Quality Measures and Standardized Data Elements,* available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/IRF-Quality-Reporting/IRF-Quality-Reporting-Program-Measures-Information-.html.*

Patients or residents with central lines, including those peripherally inserted or who have subcutaneous central line ''port'' access, always require vigilant nursing care to keep patency of the lines and ensure that such invasive lines remain free from any potentially life-threatening events such as infection, air embolism, or bleeding from an open lumen. Clinically complex patients and residents are likely to be receiving medications or nutrition intravenously. The sub-elements included in the IV Access data elements distinguish between peripheral access and different types of central access. The rationale for distinguishing between a peripheral IV and central IV access is that central lines confer higher risks associated with life-threatening events such as pulmonary embolism, infection, and bleeding.

The proposed IV Access (Peripheral IV, Midline, Central line, Other) data elements are not currently included on any of the mandated PAC assessment instruments. However, related data elements (for example, IV Medication in MDS 3.0 for SNF, Intravenous or infusion therapy in OASIS–C2 for HHAs) currently assess types of IV access. Several related data elements that describe types of IV access (for example, Central Line Management, IV Vasoactive Medications) were tested across the four PAC providers in the PAC PRD study, and found to be feasible for standardization.

Clinical and subject matter expert advisors working with our data element contractor agreed that assessing type of IV access would be feasible for use in PAC and that it assesses an important treatment that would be clinically useful both within and across PAC provider types. We requested public comment on one of the PAC PRD data elements, Central Line Management, from August 12 to September 12, 2016. A central line is one type of IV access. Commenters supported the assessment of central line management and recommended that the data element be broadened to also include other types of IV access. Several commenters supported the data element, noting feasibility and importance for facilitating care coordination and care transitions. However, a few commenters recommended that the definition of this data element be broadened to include peripherally inserted central catheters (''PICC lines'') and midline IVs. Based on public comment feedback and in consultation with clinical and subject matters experts, we expanded the Central Line Management data element to include more types of IV access (Peripheral IV, Midline, Central line,

Other). This expanded version, IV Access (Peripheral IV, Midline, Central line, Other), are the data elements being proposed. A full report of the comments is available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html.*

We note that the IV Access (Peripheral IV, Midline, Central line, Other) data elements were supported by the TEP that discussed candidate data elements for Special Services, Treatments, and Interventions during a meeting on January 5 and 6, 2017. A full report of the TEP discussion is available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html.*

Therefore, we are proposing that the IV access (Peripheral IV, Midline, Central line, Other) data elements with a principal data element and four sub-elements meet the definition of standardized patient assessment data for special services, treatments, and interventions under section 1899B(b)(1)(B)(iii) of the Act. We are proposing to add the IV Access (Peripheral IV, Midline, Central line, Other) data elements to the IRF–PAI and that IRFs would be required to report these data for the FY 2020 IRF QRP on admission and discharge for all Medicare Part A and MA patients discharged between October 1, 2018 and December 31, 2018. Following the initial reporting year for the FY 2020 IRF QRP, subsequent years for the IRF QRP would be based on a full calendar year of such data reporting.

We are inviting public comment on these proposals.

(xii) Nutritional Approach: Parenteral/IV Feeding

We are proposing that the Parenteral/IV Feeding data element meets the definition of standardized patient assessment data for special services, treatments, and interventions under section 1899B(b)(1)(B)(iii) of the Act. The proposed data element consists of the single Parenteral/IV Feeding data element. For more information on the Parenteral/IV Feeding data element, we refer readers to the document titled, *Proposed Specifications for IRF QRP Quality Measures and Standardized Data Elements,* available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/IRF-Quality-Reporting/IRF-Quality-Reporting-Program-Measures-Information-.html.*

Parenteral/IV Feeding refers to a patient or resident being fed intravenously using an infusion pump, bypassing the usual process of eating and digestion. The need for IV/parenteral feeding indicates a clinical complexity that prevents the patient or resident from meeting his/her nutritional needs enterally, and is more resource intensive than other forms of nutrition, as it often requires monitoring of blood chemistries, and maintenance of a central line. Therefore, assessing a patient or resident's need for parenteral feeding is important for care planning and resource use. In addition to the risks associated with central and peripheral intravenous access, total parenteral nutrition is associated with significant risks such as embolism and sepsis.

The Parenteral/IV Feeding data element is currently in use in the MDS 3.0, and equivalent or related data elements are in use in the LCDS, IRF–PAI, and the OASIS–C2. An equivalent data element was tested in the PAC PRD (''Total Parenteral Nutrition'') and found feasible for use in each of the four PAC settings, demonstrating the feasibility of collecting information about this nutritional service in these settings.

Total Parenteral Nutrition (an item with the same meaning as the proposed data element, but with the label used in the PAC PRD) was included in a call for public comment that was open from August 12 to September 12, 2016. Several commenters supported this data element, noting its relevance to facilitating care coordination and supporting care transitions. After the public comment period, the Total Parenteral Nutrition data element was re-named Parenteral/IV Feeding, to be consistent with how this data element is referred to in the MDS. A full report of the comments is available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html.*

A TEP convened by the data element contractor provided input on the proposed data elements. This TEP, held on January 5 and 6, 2017, opined that these data elements are appropriate for standardization because they would provide useful clinical information to inform care planning and care coordination. The TEP affirmed that assessment of these services and interventions is standard clinical practice. A full report of the TEP discussion is available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html.*

Therefore, we are proposing that the Parenteral/IV Feeding data element meets the definition of standardized patient assessment data for special services, treatments, and interventions under section 1899B(b)(1)(B)(iii) of the Act. We are proposing to modify the existing Tube/Parenteral feeding item in the IRF–PAI to the Parenteral/IV Feeding data element, and that IRFs would be required to report these data for the FY 2020 IRF QRP on admission and discharge for all Medicare Part A and MA patients discharged between October 1, 2018 and December 31, 2018. Following the initial reporting year for the FY 2020 IRF QRP, subsequent years for the IRF QRP would be based on a full calendar year of such data reporting.

We are inviting public comment on these proposals.

(xiii) Nutritional Approach: Feeding Tube

We are proposing that the Feeding Tube data element meets the definition of standardized patient assessment data for special services, treatments, and interventions under section 1899B(b)(1)(B)(iii) of the Act. The proposed data element consists of the single Feeding Tube data element. For more information on the Feeding Tube data element, we refer readers to the document titled, *Proposed Specifications for IRF QRP Quality Measures and Standardized Data Elements,* available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/IRF-Quality-Reporting/IRF-Quality-Reporting-Program-Measures-Information-.html.*

The majority of patients admitted to acute care hospitals experience deterioration of their nutritional status during their hospital stay, making assessment of nutritional status and method of feeding if unable to eat orally very important in PAC. A feeding tube can be inserted through the nose or the skin on the abdomen to deliver liquid nutrition into the stomach or small intestine. Feeding tubes are resource intensive and are therefore important to assess for care planning and resource use. Patients with severe malnutrition are at higher risk for a variety of complications.[49] In PAC settings, there

[49] Dempsey, D.T., Mullen, J.L., & Buzby, G.P. (1988). ''The link between nutritional status and clinical outcome: can nutritional intervention

are a variety of reasons that patients and residents may not be able to eat orally (including clinical or cognitive status).

The Feeding Tube data element is currently included in the MDS 3.0 for SNFs, and in the OASIS–C2 for HHAs, where it is labeled Enteral Nutrition. A related data element is collected in the IRF–PAI for IRFs (Tube/Parenteral Feeding). The testing of similar nutrition-focused data elements in the PAC PRD, and the current assessment of feeding tubes and related nutritional services and devices, demonstrates the feasibility of collecting information about this nutritional service in these settings.

Clinical and subject matter expert advisors working with our data element contractor opined that the Feeding Tube data element is feasible for use in PAC, and supported its importance and clinical usefulness for patients in PAC settings, due to the increased level of nursing care and patient monitoring required for patients who received enteral nutrition with this device.

We solicited additional feedback on an Enteral Nutrition data element (an item with the same meaning as the proposed data element, but with the label used in the OASIS) in a call for public comment that was open from August 12 to September 12, 2016. Several commenters supported the data element, noting the importance of assessing enteral nutrition status for facilitating care coordination and care transitions. After the public comment period, the Enteral Nutrition data element used in public comment was renamed Feeding Tube, indicating the presence of an assistive device. A full report of the comments is available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html.*

We note that the Feeding Tube data element was also supported by the TEP that discussed candidate data elements for Special Services, Treatments, and Interventions during a meeting on January 5 and 6, 2017. A full report of the TEP discussion is available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html.*

Therefore, we are proposing that the Feeding Tube data element meets the definition of standardized patient assessment data for special services, treatments, and interventions under section 1899B(b)(1)(B)(iii) of the Act. We are proposing to modify the existing Tube/Parenteral feeding item in the IRF–PAI to the Feeding Tube data element and that IRFs would be required to report these data for the FY 2020 IRF QRP on admission and discharge for all Medicare Part A and MA patients discharged between October 1, 2018 and December 31, 2018. Following the initial reporting year for the FY 2020 IRF QRP, subsequent years for the IRF QRP would be based on a full calendar year of such data reporting.

We are inviting public comment on these proposals.

(xiv) Nutritional Approach: Mechanically Altered Diet

We are proposing that the Mechanically Altered Diet data element meets the definition of standardized patient assessment data for special services, treatments, and interventions under section 1899B(b)(1)(B)(iii) of the Act. The proposed data element consists of the single Mechanically Altered Diet data element. For more information on the Mechanically Altered Diet data element, we refer readers to the document titled, *Proposed Specifications for IRF QRP Quality Measures and Standardized Data Elements,* available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/IRF-Quality-Reporting/IRF-Quality-Reporting-Program-Measures-Information-.html.*

The Mechanically Altered Diet data element refers to food that has been altered to make it easier for the patient or resident to chew and swallow, and this type of diet is used for patients and residents who have difficulty performing these functions. Patients with severe malnutrition are at higher risk for a variety of complications.[50] In PAC settings, there are a variety of reasons that patients and residents may have impairments related to oral feedings, including clinical or cognitive status. The provision of a mechanically altered diet may be resource intensive, and can signal difficulties associated with swallowing/eating safety, including dysphagia. In other cases, it signifies the type of altered food source, such as ground or puree that will enable the safe and thorough ingestion of nutritional substances and ensure safe and adequate delivery of nourishment to the patient. Often, patients on mechanically altered diets also require additional nursing supports such as individual feeding, or direct observation, to ensure the safe consumption of the food product. Assessing whether a patient or resident requires a mechanically altered diet is therefore important for care planning and resource identification.

The proposed data element for a mechanically altered diet is currently included on the MDS 3.0 for SNFs. A related data element for modified food consistency/supervision is currently included on the IRF–PAI for IRFs. A related data element is included in the OASIS–C2 for HHAs that collects information about independent eating that requires ''a liquid, pureed or ground meat diet.'' The testing of similar nutrition-focused data elements in the PAC PRD, and the current assessment of various nutritional services across the four PAC settings, demonstrates the feasibility of collecting information about this nutritional service in these settings.

Clinical and subject matter expert advisors working with our data element contractor agreed that the proposed Mechanically Altered Diet data element is feasible for use in PAC, and it assesses an important treatment that would be clinically useful both within and across PAC settings. Expert input on the Mechanically Altered Diet data element highlighted its importance and clinical usefulness for patients in PAC settings, due to the increased monitoring and resource use required for patients on special diets. We note that the Mechanically Altered Diet data element was also supported by the TEP that discussed candidate data elements for Special Services, Treatments, and Interventions during a meeting on January 5 and 6, 2017. A full report of the TEP discussion is available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html.*

Therefore, we are proposing that the Mechanically Altered Diet data element meets the definition of standardized patient assessment data for special services, treatments, and interventions under section 1899B(b)(1)(B)(iii) of the Act. We are proposing to modify the existing Modified food consistency/supervision data element in the IRF–PAI to the Mechanically Altered Diet data element and that IRFs would be required to report these data for the FY 2020 IRF QRP on admission and discharge for all Medicare Part A and

modify it?'' Am J of Clinical Nutrition 47(2): 352–356.

[50] Dempsey, D.T., Mullen, J.L., & Buzby, G.P. (1988). ''The link between nutritional status and clinical outcome: can nutritional intervention modify it?'' Am J of Clinical Nutrition 47(2): 352–356.

MA patients discharged between October 1, 2018 and December 31, 2018. Following the initial reporting year for the FY 2020 IRF QRP, subsequent years for the IRF QRP would be based on a full calendar year of such data reporting.

We are inviting public comment on these proposals.

(xv) Nutritional Approach: Therapeutic Diet

We are proposing that the Therapeutic Diet data element meets the definition of standardized patient assessment data for special services, treatments, and interventions under section 1899B(b)(1)(B)(iii) of the Act. The proposed data element consists of the single Therapeutic Diet data element. For more information on the Therapeutic Diet data element, we refer readers to the document titled, *Proposed Specifications for IRF QRP Quality Measures and Standardized Data Elements,* available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/IRF-Quality-Reporting/IRF-Quality-Reporting-Program-Measures-Information-.html.*

Therapeutic Diet refers to meals planned to increase, decrease, or eliminate specific foods or nutrients in a patient or resident's diet, such as a low-salt diet, for the purpose of treating a medical condition. The use of therapeutic diets among patients in PAC provides insight on the clinical complexity of these patients and their multiple comorbidities. Therapeutic diets are less resource intensive from the bedside nursing perspective, but do signify one or more underlying clinical conditions that preclude the patient from eating a regular diet. The communication among PAC providers about whether a patient is receiving a particular therapeutic diet is critical to ensure safe transitions of care.

The Therapeutic Diet data element is currently in use in the MDS 3.0. The testing of similar nutrition-focused data elements in the PAC PRD, and the current assessment of various nutritional services across the four PAC settings, demonstrates the feasibility of collecting information about this nutritional service in these settings.

Clinical and subject matter expert advisors working with our data element contractor supported the importance and clinical usefulness of the proposed Therapeutic Diet data element for patients in PAC settings, due to the increased monitoring and resource use required for patients on special diets, and agreed that it is feasible for use in PAC and that it assesses an important treatment that would be clinically useful both within and across PAC settings. We note that the Therapeutic Diet data element was also supported by the TEP that discussed candidate data elements for Special Services, Treatments, and Interventions during a meeting on January 5 and 6, 2017.

Therefore, we are proposing that the Therapeutic Diet data element meets the definition of standardized patient assessment data for special services, treatments, and interventions under section 1899B(b)(1)(B)(iii) of the Act. We are proposing to add the Therapeutic Diet data element to the IRF–PAI, and that IRFs would be required to report these data for the FY 2020 IRF QRP on admission and discharge for all Medicare Part A and MA patients discharged between October 1, 2018 and December 31, 2018. Following the initial reporting year for the FY 2020 IRF QRP, subsequent years for the IRF QRP would be based on a full calendar year of such data reporting.

We are inviting public comment on these proposals.

(4) Medical Condition and Comorbidity Data

We are proposing that the data elements needed to calculate the current measure, Percent of Residents or Patients with Pressure Ulcers That Are New or Worsened (Short Stay) (NQF #0678), and the proposed measure, Changes in Skin Integrity Post-Acute Care: Pressure Ulcer/Injury, meet the definition of standardized patient assessment data for medical conditions and co-morbidities under section 1899B(b)(1)(B)(iv) of the Act, and that the successful reporting of that data under section 1886(j)(7)(F)(i) of the Act would also satisfy the requirement to report standardized patient assessment data under section 1886(j)(7)(F)(ii) of the Act.

''Medical conditions and comorbidities'' and the conditions addressed in the standardized data elements used in the calculation and risk adjustment of these measures, that is, the presence of pressure ulcers, diabetes, incontinence, peripheral vascular disease or peripheral arterial disease, mobility, as well as low body mass index, are all health-related conditions that indicate medical complexity that can be indicative of underlying disease severity and other comorbidities.

Specifically, the data elements used in the measure are important for care planning and provide information pertaining to medical complexity. Pressure ulcers are serious wounds representing poor outcomes, and can result in sepsis and death. Assessing skin condition, care planning for pressure ulcer prevention and healing, and informing providers about their presence in patient transitions of care is a customary and best practice. Venous and arterial disease and diabetes are associated with low blood flow which may increase the risk of tissue damage. These diseases are indicators of factors that may place individuals at risk for pressure ulcer development and are therefore important for care planning. Low BMI, which may be an indicator of underlying disease severity, may be associated with loss of fat and muscle, resulting in potential risk for pressure ulcers. Bowel incontinence, and the possible maceration to the skin associated, can lead to higher risk for pressure ulcers. In addition, the bacteria associated with bowel incontinence can complicate current wounds and cause local infection. Mobility is an indicator of impairment or reduction in mobility and movement which is a major risk factor for the development of pressure ulcers. Taken separately and together, these data elements are important for care planning, transitions in services and identifying medical complexities.

In sections XII.G.1 and XII.J.1 of this proposed rule, we discuss our rationale for proposing that the data elements used in the measures meet the definition of standardized patient assessment data. In summary, we believe that the collection of such assessment data is important for multiple reasons, including clinical decision support, care planning, and quality improvement, and that the data elements assessing pressure ulcers and the data elements used to risk adjust showed good reliability. We solicited stakeholder feedback on the quality measure, and the data elements from which it is derived, by means of a public comment period and TEPs, as described in section XII.G.1 of this proposed rule.

We are inviting public comment on this proposal.

(5) Impairment Data

Hearing and vision impairments are conditions that, if unaddressed, affect activities of daily living, communication, physical functioning, rehabilitation outcomes, and overall quality of life. Sensory limitations can lead to confusion in new settings, increase isolation, contribute to mood disorders, and impede accurate assessment of other medical conditions. Failure to appropriately assess, accommodate, and treat these conditions increases the likelihood that patients will require more intensive and prolonged treatment. Onset of these

conditions can be gradual, so individualized assessment with accurate screening tools and follow-up evaluations are essential to determining which patients need hearing- or vision-specific medical attention or assistive devices, and accommodations, including auxiliary aids and/or services, and to ensure that person-directed care plans are developed to accommodate a patient's needs. Accurate diagnosis and management of hearing or vision impairment would likely improve rehabilitation outcomes and care transitions, including transition from institutional-based care to the community. Accurate assessment of hearing and vision impairment would be expected to lead to appropriate treatment, accommodations, including the provision of auxiliary aids and services during the stay, and ensure that patients continue to have their vision and hearing needs met when they leave the facility.

Accurate individualized assessment, treatment, and accommodation of hearing and vision impairments of patients and residents in PAC would be expected to have a positive impact on the National Quality Strategy's domains of patient and family engagement, patient safety, care coordination, clinical process/effectiveness, and efficient use of healthcare resources. For example, standardized assessment of hearing and vision impairments used in PAC will support ensuring patient safety (for example, risk of falls) identifying accommodations needed during the stay, and appropriate support needs at the time of discharge or transfer. Standardized assessment of these data elements will enable or support clinical decision-making and early clinical intervention; person-centered, high quality care (for example, facilitating better care continuity and coordination); better data exchange and interoperability between settings; and longitudinal outcome analysis. Hence, reliable data elements assessing hearing and vision impairments are needed to initiate a management program that can optimize a patient or resident's prognosis and reduce the possibility of adverse events.

(i) Hearing

We are proposing that the Hearing data element meets the definition of standardized patient assessment data for impairments under section 1899B(b)(1)(B)(v) of the Act. The proposed data element consists of the single Hearing data element. This data element assesses level of hearing impairment, and consists of one question. For more information on the Hearing data element, we refer readers to the document titled, *Proposed Specifications for IRF QRP Quality Measures and Standardized Data Elements,* available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/IRF-Quality-Reporting/IRF-Quality-Reporting-Program-Measures-Information-.html.*

Accurate assessment of hearing impairment is important in the PAC setting for care planning and resource use. Hearing impairment has been associated with lower quality of life, including poorer physical, mental, and social functioning, and emotional health.[51] [52] Treatment and accommodation of hearing impairment led to improved health outcomes, including but not limited to quality of life.[53] For example, hearing loss in elderly individuals has been associated with depression and cognitive impairment,[54] [55] [56] higher rates of incident cognitive impairment and cognitive decline,[57] and less time in occupational therapy.[58] Accurate assessment of hearing impairment is important in the PAC setting for care planning and defining resource use.

The proposed data element was selected from two forms of the Hearing data element based on expert and stakeholder feedback. We considered the two forms of the Hearing data element, one of which is currently in use in the MDS 3.0 (Hearing) and another data element with different wording and fewer response option categories that is currently in use in the OASIS–C2 (Ability to Hear). Ability to Hear was also tested in the PAC PRD and found to have substantial agreement for inter-rater reliability across PAC settings (kappa of 0.78).[59]

Several data elements that assess hearing impairment were presented to the Standardized Patient Assessment Data TEP held by our data element contractor. The TEP did not reach consensus on the ideal number of response categories or phrasing of response options, which are the primary differences between the current MDS (Hearing) and OASIS (Ability to Hear) items. The Development and Maintenance of Post-Acute Care Cross-Setting Standardized Patient Assessment Data Technical Expert Panel Summary Report is available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html.*

The PAC PRD form of the data element (Ability to Hear) was included in a call for public comment that was open from August 12 to September 12, 2016. This data element includes three response choices, in contrast to the Hearing data element (in use in the MDS 3.0 and being proposed for standardization), which includes four response choices. Several commenters supported the use of the Ability to Hear data element, although some commenters raised concerns that the three-level response choice was not compatible with the current, four-level response used in the MDS, and favored the use of the MDS version of the Hearing data element. In addition, we received comments stating that standardized assessment related to hearing impairment has the ability to improve quality of care if information on hearing is included in medical records of patients and residents, which would improve care coordination and facilitate the development of patient- and resident-centered treatment plans. Based on comments that the three-level response choice (Ability to Hear) was not congruent with the current, four-level response used in the MDS (Hearing), and support for the use of the MDS version of the Hearing data element received in the public comment, we are proposing the Hearing data element. A full report of the

[51] Dalton DS, Cruickshanks KJ, Klein BE, Klein R, Wiley TL, Nondahl DM. The impact of hearing loss on quality of life in older adults. *Gerontologist.* 2003;43(5):661–668.

[52] Hawkins K, Bottone FG, Jr., Ozminkowski RJ, et al. The prevalence of hearing impairment and its burden on the quality of life among adults with Medicare Supplement Insurance. *Qual Life Res.* 2012;21(7):1135–1147.

[53] Horn KL, McMahon NB, McMahon DC, Lewis JS, Barker M, Gherini S. Functional use of the Nucleus 22-channel cochlear implant in the elderly. *The Laryngoscope.* 1991;101(3):284–288.

[54] Sprinzl GM, Riechelmann H. Current trends in treating hearing loss in elderly people: A review of the technology and treatment options—a mini-review. *Gerontology.* 2010;56(3):351–358.

[55] Lin FR, Thorpe R, Gordon-Salant S, Ferrucci L. Hearing Loss Prevalence and Risk Factors Among Older Adults in the United States. *The Journals of Gerontology Series A: Biological Sciences and Medical Sciences.* 2011;66A(5):582–590.

[56] Hawkins K, Bottone FG, Jr., Ozminkowski RJ, et al. The prevalence of hearing impairment and its burden on the quality of life among adults with Medicare Supplement Insurance. *Qual Life Res.* 2012;21(7):1135–1147.

[57] Lin FR, Metter EJ, O'Brien RJ, Resnick SM, Zonderman AB, Ferrucci L. Hearing Loss and Incident Dementia. *Arch Neurol.* 2011;68(2):214–220.

[58] Cimarolli VR, Jung S. Intensity of Occupational Therapy Utilization in Nursing Home Residents: The Role of Sensory Impairments. *J Am Med Dir Assoc.* 2016;17(10):939–942.

[59] Gage B., Smith L., Ross J. et al. (2012). The Development and Testing of the Continuity Assessment Record and Evaluation (CARE) Item Set (Final Report on Reliability Testing, Volume 2 of 3). Research Triangle Park, NC: RTI International.

comments is available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html.*

Therefore, we are proposing the Hearing data element currently in use in the MDS. We are proposing to add the Hearing data element to the IRF–PAI, and that IRFs would be required to report these data for the FY 2020 IRF QRP on admission for all Medicare Part A and MA patients discharged between October 1, 2018 and December 31, 2018. Following the initial reporting year for the FY 2020 IRF QRP, subsequent years for the IRF QRP would be based on a full calendar year of such data reporting. The Hearing data element would be assessed at admission only due to the relatively stable nature of hearing impairment, making it unlikely that this assessment would change between the start and end of the PAC stay. Assessment at discharge would introduce additional burden without improving the quality or usefulness of the data, and we believe it is unnecessary.

We are inviting public comment on these proposals.

(ii) Vision

We are proposing that the Vision data element meets the definition of standardized patient assessment data element for impairments under section 1899B(b)(1)(B)(v) of the Act. The proposed data element consists of the single Vision (Ability To See in Adequate Light) data element that consists of one question with five response categories. For more information on the Vision data element, we refer readers to the document titled, *Proposed Specifications for IRF QRP Quality Measures and Standardized Data Elements,* available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/IRF-Quality-Reporting/IRF-Quality-Reporting-Program-Measures-Information-.html.*

Evaluation of an individual's ability to see is important for assessing for risks such as falls and provides opportunities for improvement through treatment and the provision of accommodations, including auxiliary aids and services, which can safeguard patients and improve their overall quality of life. Further, vision impairment is often a treatable risk factor associated with adverse events and poor quality of life. For example, individuals with visual impairment are more likely to experience falls and hip fracture, have less mobility, and report depressive symptoms.[60] [61] [62] [63] [64] [65] [66]

Individualized initial screening can lead to life-improving interventions such as accommodations, including the provision of auxiliary aids and services, during the stay and/or treatments that can improve vision and prevent or slow further vision loss. For patients with some types of visual impairment, use of glasses and contact lenses can be effective in restoring vision.[67] Other conditions, including glaucoma [68] and age-related macular degeneration,[69] [70] have responded well to treatment. In addition, vision impairment is often a treatable risk factor associated with adverse events which can be prevented and accommodated during the stay. Accurate assessment of vision impairment is important in the PAC setting for care planning and defining resource use.

The Vision data element that we are proposing for standardization was tested as part of the development of the MDS 3.0 and is currently in use in that assessment. Similar data elements, but with different wording and fewer response option categories, are in use in the OASIS–C2 and were tested in post-acute providers in the PAC PRD and found to be clinically relevant, meaningful for care planning, reliable (kappa of 0.74),[71] and feasible for use in each of the four PAC settings.

Several data elements that assess vision were presented to the TEP held by our data element contractor. The TEP did not reach consensus on the ideal number of response categories or phrasing of response options, which are the primary differences between the current MDS and OASIS items; some members preferring more granular response options (for example, mild impairment and moderate impairment) while others were comfortable with collapsed response options (that is, mild/moderate impairment). The Development and Maintenance of Post-Acute Care Cross-Setting Standardized Patient Assessment Data Technical Expert Panel Summary Report is available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html.* We solicited public comment from August 12 to September 12, 2016, on the Ability to See in Adequate Light data element (version tested in the PAC PRD with three response categories). The data element in public comment differed from the proposed data element, but the comments supported the assessment of vision in PAC settings and the useful information a vision data element would provide. The commenters stated that the Ability to See item would provide important information that would facilitate care coordination and care planning, and consequently improve the quality of care. Other commenters suggested it would be helpful as an indicator of resource use and noted that the item would provide useful information about the abilities of patients and residents to care for themselves. Additional commenters noted that the item could feasibly be implemented across PAC providers and that its kappa scores from the PAC PRD support its validity. Some commenters noted a preference for MDS version of the Vision data element over the form put forward in public comment, citing the widespread use of this data element.

[60] Colon-Emeric CS, Biggs DP, Schenck AP, Lyles KW. Risk factors for hip fracture in skilled nursing facilities: Who should be evaluated? *Osteoporos Int.* 2003;14(6):484–489.

[61] Freeman EE, Munoz B, Rubin G, West SK. Visual field loss increases the risk of falls in older adults: The Salisbury eye evaluation. *Invest Ophthalmol Vis Sci.* 2007;48(10):4445–4450.

[62] Keepnews D, Capitman JA, Rosati RJ. Measuring patient-level clinical outcomes of home health care. *J Nurs Scholarsh.* 2004;36(1):79–85.

[63] Nguyen HT, Black SA, Ray LA, Espino DV, Markides KS. Predictors of decline in MMSE scores among older Mexican Americans. *J Gerontol A Biol Sci Med Sci.* 2002;57(3):M181–185.

[64] Prager AJ, Liebmann JM, Cioffi GA, Blumberg DM. Self-reported Function, Health Resource Use, and Total Health Care Costs Among Medicare Beneficiaries With Glaucoma. *JAMA ophthalmology.* 2016;134(4):357–365.

[65] Rovner BW, Ganguli M. Depression and disability associated with impaired vision: The MoVies Project. *J Am Geriatr Soc.* 1998;46(5):617–619.

[66] Tinetti ME, Ginter SF. The nursing home life-space diameter. A measure of extent and frequency of mobility among nursing home residents. *J Am Geriatr Soc.* 1990;38(12):1311–1315.

[67] Rein DB, Wittenborn JS, Zhang X, et al. The Cost-effectiveness of Welcome to Medicare Visual Acuity Screening and a Possible Alternative Welcome to Medicare Eye Evaluation Among Persons Without Diagnosed Diabetes Mellitus. *Archives of ophthalmology.* 2012;130(5):607–614.

[68] Leske M, Heijl A, Hussein M, et al. Factors for glaucoma progression and the effect of treatment: The early manifest glaucoma trial. *Archives of Ophthalmology.* 2003;121(1):48–56.

[69] Age-Related Eye Disease Study Research G. A randomized, placebo-controlled, clinical trial of high-dose supplementation with vitamins c and e, beta carotene, and zinc for age-related macular degeneration and vision loss: AREDS report no. 8. *Archives of Ophthalmology.* 2001;119(10):1417–1436.

[70] Takeda AL, Colquitt J, Clegg AJ, Jones J. Pegaptanib and ranibizumab for neovascular age-related macular degeneration: A systematic review. *The British Journal of Ophthalmology.* 2007;91(9):1177–1182.

[71] Gage B., Smith L., Ross J. et al. (2012). The Development and Testing of the Continuity Assessment Record and Evaluation (CARE) Item Set (Final Report on Reliability Testing, Volume 2 of 3). Research Triangle Park, NC: RTI International.

A full report of the comments is available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html.*

Therefore, we are proposing the Vision data element from the MDS. We are proposing to add the Vision data element to the IRF–PAI and that IRFs would be required to report these data for the FY 2020 IRF QRP on admission for all Medicare Part A and MA patients discharged between October 1, 2018 and December 31, 2018. Following the initial reporting year for the FY 2020 IRF QRP, subsequent years for the IRF QRP would be based on a full calendar year of such data reporting. The Vision data element would be assessed at admission only due to the relatively stable nature of vision impairment, making it unlikely that this assessment would change between the start and end of the PAC stay. Assessment at discharge would introduce additional burden without improving the quality or usefulness of the data, and we believe that it is unnecessary.

We are inviting public comment on these proposals.

K. Proposals Relating to the Form, Manner, and Timing of Data Submission Under the IRF QRP

1. Proposed Start Date for Standardized Patient Assessment Data Reporting by New IRFs

In the IRF PPS FY 2016 final rule (80 FR 47123 through 47124), we adopted timing for new IRFs to begin reporting quality data under the IRF QRP beginning with the FY 2017 IRF QRP. We are proposing in this proposed rule that new IRFs will be required to begin reporting standardized patient assessment data on the same schedule. We are inviting public comment on this proposal.

2. Proposed Mechanism for Reporting Standardized Patient Assessment Data Beginning With the FY 2019 IRF QRP

Under our current policy, IRFs report data by completing applicable sections of the IRF–PAI, and submitting the IRF–PAI to CMS through the QIES, ASAP system. For more information on IRF QRP reporting through the QIES ASAP system, refer to the ''Related Links'' section at the bottom of *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientRehabFacPPS/Software.html.* The proposed standardized patient assessment data elements are either already included on, or would be added to, the IRF–PAI. Details regarding the IRF–PAI to the proposed standardized assessment data are available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/IRF-Quality-Reporting/IRF-PAI-and-IRF-QRP-Manual.html.*

We are inviting public comments on this proposal.

3. Proposed Schedule for Reporting Standardized Patient Assessment Data Beginning With the FY 2019 IRF QRP

Starting with the FY 2019 IRF QRP, we are proposing to apply our current schedule for the reporting of measure data to the reporting of standardized patient assessment data. Under that policy, except for the first program year for which a measure is adopted, IRFs must report data on measures for IRF Medicare patients who are discharged during the 12-month calendar year (CY) period that apply to the program year. For the first program year for which a measure is adopted, IRFs are only required to report data on IRF Medicare patients who are discharged on or after October 1 of the last quarter of the calendar year that applies to that program year. For example, for the FY 2018 IRF QRP, data on measures adopted for earlier program years must be reported for all IRF Medicare patients who are discharged during CY 2016. However, data on new measures adopted for the first time for the FY 2018 IRF QRP must only be reported for IRF Medicare patients who are discharged during the last calendar quarter of 2016.

Tables 9 and 10 illustrate this policy using the FY 2019 and FY 2020 IRF QRP as examples.

TABLE 9—SUMMARY ILLUSTRATION OF INITIAL REPORTING CYCLE FOR NEWLY ADOPTED MEASURE AND STANDARDIZED PATIENT ASSESSMENT DATA REPORTING USING CY Q4 DATA *^

Proposed data collection/submission quarterly reporting period *	Proposed data submission quarterly deadlines *^ for the FY 2019 IRF QRP **
Q4: CY 2017 10/1/2017–12/31/2017	CY 2017 Q4 Deadline: May 15, 2018.

* We note that the submission of IRF–PAI data must also adhere to the IRF PPS deadlines.
** The term ''FY 2019 IRF QRP'' means the fiscal year for which the IRF QRP requirements applicable to that fiscal year must be met in order for an IRF to receive the full annual update when calculating the payment rates applicable to it for that fiscal year.
^ Applies to data reporting using the IRF PAI and data reporting using the National Health Safety Network.

TABLE 10—SUMMARY ILLUSTRATION OF CALENDAR YEAR QUARTERLY REPORTING CYCLES FOR MEASURE AND STANDARDIZED PATIENT ASSESSMENT DATA REPORTING *^

Proposed data collection/submission quarterly reporting period *	Proposed data submission quarterly deadlines *^ for the FY 2020 IRF QRP **
Q1: CY 2018 1/1/2018–3/31/2018	CY 2018 Q1 Deadline: August 15, 2018.
Q2: CY 2018 4/1/2018–6/30/2018	CY 2018 Q2 Deadline: November 15, 2018.
Q3: CY 2018 7/1/2018–9/30/2018	CY 2018 Q3 Deadline: February 15, 2019.
Q4: CY 2018 10/1/2018–12/31/2018	CY 2018 Q4 Deadline: May 15, 2019.

* We note that the submission of IRF–PAI data must also adhere to the IRF PPS deadlines.
** The term ''FY 2020 IRF QRP'' means the fiscal year for which the IRF QRP requirements applicable to that fiscal year must be met in order for an IRF to receive the full annual update when calculating the payment rates applicable to it for that fiscal year.
^ Applies to data reporting using the IRF PAI and data reporting using the National Health Safety Network.

We are inviting public comment on our proposal to extend our current policy governing the schedule for reporting quality measure data to the reporting of standardized patient assessment data beginning with the FY 2019 IRF QRP.

4. Proposed Schedule for Reporting the Proposed Changes in Skin Integrity Post-Acute Care: Pressure Ulcer/Injury Measure Beginning With the FY 2020 IRF QRP

As discussed in section XII.G. of this proposed rule, we are proposing to adopt the Changes in Skin Integrity Post-Acute Care: Pressure Ulcer/Injury measure beginning with the FY 2020 IRF QRP. We are proposing that IRFs would report data on that measure using the IRF–PAI that is submitted through the QIES ASAP system. IRFs would be required to report these data on admission and discharge for all Medicare Part A and MA patients discharged between October 1, 2018 and December 31, 2018. More information on IRF reporting using the QIES ASAP system is located at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/IRF-Quality-Reporting/Technical-Information.html.*

Under our current policy, IRFs would only be required to submit data on the proposed measure for the fourth quarter of CY 2018 for purposes of the FY 2020 IRF QRP. Starting in CY 2019, IRFs would be required to submit data for the entire calendar year beginning with the FY 2021 IRF QRP.

5. Input Sought for Data Reporting Related to Assessment Based Measures

Through various means of public input, including that through previous rules, public comment on measures and the Measures Application Partnership, we received input suggesting that we expand the quality measures to include all patients regardless of payer status so as to ensure representation of the quality of the services provided on the population as a whole, rather than a subset limited to Medicare. For IRFs, the Medicare population comprises approximately 60 percent of the IRF population served. We agree that collecting quality data on all patients in the IRF setting supports CMS' mission to ensure quality care for all individuals, including Medicare beneficiaries. We also appreciate that collecting quality data on all patients regardless of payer source may create additional burden. However, we also note that the effort to separate out Medicare beneficiaries from other patients has clinical and work flow implications with an associated burden, and we further appreciate that it is common practice for IRFs to collect IRF–PAI data on all patients, regardless of payer source. Accurate representation of quality provided in IRFs is best conveyed using data on all IRF patients, regardless of payer. Thus, we are seeking input on whether we should require quality data reporting on all IRF patients, regardless of payer, where feasible—noting that Part A claims data are limited to only Medicare beneficiaries.

We are seeking comments on this topic.

L. Proposal To Apply the IRF QRP Submission Requirements and Payment Impact to the Standardized Patient Assessment Data Beginning With the FY 2019 IRF QRP

We are proposing to revise § 412.634(b) to require IRFs to report both data on measures and standardized patient assessment data under the IRF QRP, in a form and manner, and at a time specified by CMS.

We are inviting public comment on this proposal.

M. Proposal To Apply the IRF QRP Exception and Extension Requirements to the Submission of Standardized Patient Assessment Data Beginning With the FY 2019 IRF QRP

In the FY 2017 IRF PPS final rule (81 FR 52124), we codified the requirements pertaining to data submission exception and extension for the IRF QRP at § 412.634(c). We are proposing to revise § 412.634(c) to extend these policies to the submission of standardized patient assessment data beginning with the FY 2019 IRF QRP. We are inviting public comment on this proposal.

N. Proposal To Apply the IRF QRP Data Completion Thresholds to the Submission of Standardized Patient Assessment Data Beginning With the FY 2019 IRF QRP

In the FY 2015 IRF PPS final rule (79 FR 45921 through 45923), we finalized IRF QRP thresholds for completeness of IRF data submissions. To ensure that IRFs are meeting an acceptable standard for completeness of submitted data, we finalized the policy that, beginning with the FY 2016 IRF QRP, IRFs must meet or exceed two separate data completeness thresholds: One threshold set at 95 percent for completion of measures data collected using the IRF–PAI submitted through the QIES and a second threshold set at 100 percent for measures data collected and submitted using the Centers for Disease Control and Prevention (CDC) National Healthcare Safety Network (NHSN).

For a detailed discussion of the finalized IRF QRP data completion requirements, please refer to the FY 2015 IRF PPS final rule (79 FR 45921 through 45923). In the FY 2017 IRF PPS final rule, (81 FR 52124), we codified the IRF QRP Data Completion Thresholds at § 412.634. We note that § 412.634(f)(1) requires that IRFs meet or exceed the reporting threshold set at 95 percent for completion of measure data collected using the IRF–PAI. However, some assessment data will not invoke a response and in those circumstances are not ''missing'' nor is the data incomplete. For example, in the case of a patient who does not have any of the medical conditions in a check-all-that-apply listing, the absence of a response indicates that the condition is not present, and it would be incorrect to consider the absence of such data as missing in a threshold determination. We are proposing to extend our current IRF QRP data completion requirements to the reporting of standardized patient assessment data.

We are also proposing to revise § 412.634(f)(1) and (2) to include the submission of standardized patient assessment data that is collected using the IRF–PAI.

As we noted in the FY 2015 IRF PPS final rule (79 FR 45921 through 45923), the threshold of 95 percent is based on the need for complete records, which allows appropriate analysis of measure data for the purposes of updating measure specifications as they undergo measure maintenance reviews with the NQF. Additionally, complete data is needed to understand the validity and reliability of data items, including risk-adjustment models. Our data suggests that the majority of current IRF providers are in compliance with, or exceed this threshold related to the measure data, and we believe it is feasible for the standardized patient assessment data as well.

We invite public comment on our proposal to revise § 412.634(f)(1) and (2) to add standardized patient assessment data for the 95 percent completeness threshold for data collected via IRF–PAI.

O. Proposals and Policies Regarding Public Display of Measure Data for the IRF QRP

Section 1886(j)(7)(E) of the Act requires the Secretary to establish procedures for making the IRF QRP data available to the public after ensuring that an IRF has the opportunity to review its data prior to public display. Measure data is currently displayed on

the Inpatient Rehabilitation Facility Compare Web site, which is an interactive web tool that assists individuals by providing information on IRF quality of care, including those who need to select an IRF. For more information on *IRF Compare,* we refer readers to *https://www.medicare.gov/inpatientrehabilitationfacilitycompare/.* Additionally, for a more detailed discussion about the provider's confidential review process prior to public display of quality measures, we refer readers to the FY 2017 IRF PPS final rule (81 FR 52128 through 52131).

We also finalized the process we use to publish a list of IRFs that successfully meet the reporting requirements for the applicable IRF QRP year on the IRF QRP Web site in the FY 2017 IRF PPS final rule (81 FR 52125). The list of compliant IRFs is available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/IRF-Quality-Reporting/IRF-Quality-Reporting-Data-Submission-Deadlines.html.*

In the FY 2017 IRF PPS final rule (81 FR 52055 through 52141), we finalized the public display of measure data on the *IRF Compare* Web site in CY 2017 for the following four quality measures pending the availability of data: (1) NHSN Facility-wide Inpatient Hospital-onset MRSA Bacteremia Outcome Measure (NQF #1716); (2) NHSN Facility-wide Inpatient Hospital-onset CDI Outcome Measure (NQF #1717); (3) Influenza Vaccination Coverage Among Healthcare Personnel (NQF #0431); and (4) Percent of Residents or Patients Who Were Assessed and Appropriately Given the Seasonal Influenza Vaccine (NQF #0680).

The public display of NHSN Facility-wide Inpatient Hospital-onset MRSA Bacteremia Outcome Measure (NQF #1716) and NHSN Facility-wide Inpatient Hospital-onset CDI Outcome Measure (NQF #1717) will initially be based on data collected from January 1, 2015, through December 31, 2015 and will be displayed based on four rolling quarters. The Influenza Vaccination Coverage Among Healthcare Personnel (NQF #0431) and Percent of Residents or Patients Who Were Assessed and Appropriately Given the Seasonal Influenza Vaccine (NQF #0680) will be based on the influenza vaccination season from October 1, 2015, through March 31, 2016 and will be updated annually. We refer readers to the FY 2017 IRF PPS final rule (81 FR 52126 through 52128) for details on the calculations and display of these quality measures. In this FY 2018 IRF PPS proposed rule, pending the availability of data, we are proposing to publicly report data in CY 2018 for the following two assessment-based measures: (1) Application of Percent of Long-Term Care Hospital (LTCH) Patients With an Admission and Discharge Functional Assessment and a Care Plan That Addresses Function (NQF #2631); and (2) Application of Percent of Residents Experiencing One or More Falls with Major Injury (NQF #0674). Data collection for these two assessment-based measures began on October 1, 2016. We are proposing to display data for the assessment-based measures based on four rolling quarters of data and would initially use discharges from January 1, 2017, through December 31, 2017. In addition, we are proposing to publicly report four claims-based measures: (1) Medicare Spending Per Beneficiary-PAC IRF QRP; (2) Discharge to Community-PAC IRF QRP; (3) Potentially Preventable 30-Day Post-Discharge Readmission Measure for IRF QRP; and (4) Potentially Preventable Within Stay Readmission Measure for IRFs.

These measures were adopted for the IRF QRP in the FY 2017 IRF PPS final rule (81 FR 52130 through 52131) to be based on data from 2 consecutive calendar years. As previously adopted, confidential feedback reports for these four claims-based measures will be based on calendar years 2015 and 2016 and data collected for discharges beginning January 1, 2015, through December 31, 2016. However, our current proposal revises the dates for public reporting and we are proposing to transition from calendar year to fiscal year to make these measure data publicly available by October 2018. Thus, we are proposing for public reporting beginning in CY 2018 for four claims-based measures based on fiscal years 2016 and 2017 and data collected from discharges beginning October 1, 2015, through September 30, 2017.

We are proposing to remove the following claims-based measure ''All-Cause Unplanned Readmission Measure for 30 Days Post Discharge from Inpatient Rehabilitation Facilities'' from the IRF QRP and public reporting by October 2018. We refer readers to section XII.H. of this proposed rule for additional information regarding the proposed removal of this measure from quality reporting and public display. We also propose to remove the following assessment-based measure ''Percent of Residents or Patients with Pressure Ulcers That Are New or Worsened (Short Stay) (NQF #0678)'' and to replace it with a modified version of the measure entitled ''Changes in Skin Integrity Post-Acute Care: Pressure Ulcer/Injury'' from the IRF QRP and public reporting by October 2020. We refer readers to section XII.G. of this proposed rule for additional information regarding the proposed replacement of this measure from quality reporting and public display.

For the assessment-based measures, Application of Percent of LTCH Patients With an Admission and Discharge Functional Assessment and a Care Plan That Addresses Function (NQF #2631); and Application of Percent of Residents Experiencing One or More Falls with Major Injury (NQF #0674), to ensure the statistical reliability of the measures, we are proposing to assign IRFs with fewer than 20 eligible cases during a performance period to a separate category: ''The number of cases/patient stays is too small to report.'' If an IRF had fewer than 20 eligible cases, the IRF's performance would not be publicly reported for the measure for that performance period.

For the claims-based measures, Discharge to Community-PAC IRF QRP; Potentially Preventable 30-Day Post-Discharge Readmission Measure for IRF QRP; and Potentially Preventable Within Stay Readmission Measure for IRFs, to ensure the statistical reliability of the measures, we are proposing to assign IRFs with fewer than 25 eligible cases during a performance period to a separate category: ''The number of cases/patient stays is too small to report.'' If an IRF had fewer than 25 eligible cases, the IRF's performance would not be publicly reported for the measure for that performance period. For Medicare Spending Per Beneficiary-PAC IRF QRP, to ensure the statistical reliability of the measure, we are proposing to assign IRFs with fewer than 20 eligible cases during a performance period to a separate category: ''The number of cases/patient stays is too small to report.'' If an IRF had fewer than 20 eligible cases, the IRF's performance would not be publicly reported for the measure for that performance period.

TABLE 11—PREVIOUSLY FINALIZED AND PROPOSED MEASURES FOR CY 2018 PUBLIC DISPLAY AND CONFIDENTIAL FEEDBACK REPORTS

Previously Finalized Measures:
Percent of Residents or Patients with Pressure Ulcers That Are New or Worsened (Short Stay) (NQF #678)
National Healthcare Safety Network Catheter-Associated Urinary Tract Infection (CAUTI) Outcome Measure (NQF #0138)
NHSN Facility-wide Inpatient Hospital-onset Methicillin-resistant *Staphylococcus aureus* Bacteremia Outcome Measure (NQF #1716)
NHSN Facility-wide Inpatient Hospital-onset *Clostridium difficile* Infection Outcome Measure (NQF #1717)
Influenza Vaccination Coverage Among Healthcare Personnel (NQF #0431)
Percent of Residents or Patients Who Were Assessed and Appropriately Given the Seasonal Influenza Vaccine (NQF #0680)
Proposed Measures:
Application of Percent of Long-Term Care Hospital (LTCH) Patients With an Admission and Discharge Functional Assessment and a Care Plan That Addresses Function (NQF #2631)
Application of Percent of Residents Experiencing One or More Falls with Major Injury (NQF# 0674)
Medicare Spending Per Beneficiary-PAC IRF QRP
Discharge to Community-PAC IRF QRP
Potentially Preventable 30-Day Post-Discharge Readmission Measure for IRF QRP
Potentially Preventable Within Stay Readmission Measure for IRFs

We are inviting public comment on the proposal for the public display of the two assessment-based measures and four claims-based measures, the removal of the All-Cause Unplanned Readmission Measure for 30 Days Post Discharge from IRFs from the IRF QRP and from public display, and the replacement of ''Percent of Residents or Patients with Pressure Ulcers That Are New or Worsened (Short Stay) (NQF #0678)'' with a modified version of the measure entitled ''Changes in Skin Integrity Post-Acute Care: Pressure Ulcer/Injury'' as described above.

P. Mechanism for Providing Feedback Reports to IRFs

Section 1899B(f) of the Act requires the Secretary to provide confidential feedback reports to PAC providers on their performance on the measures specified under sections 1899B(c)(1) and (d)(1) of the Act, beginning one year after the specified application date that applies to such measures and PAC providers. In the FY 2017 IRF PPS final rule (81 FR 52131), we finalized processes to provide IRFs the opportunity to review their data and information using confidential feedback reports that will enable IRFs to review their performance on the measures required under the IRF QRP. Information on how to obtain these and other reports available to the IRF can be found at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/IRF-Quality-Reporting/IRF-Quality-Public-Reporting.html*. We are not proposing any changes to this policy.

Q. Proposed Method for Applying the Reduction to the FY 2018 IRF Increase Factor for IRFs That Fail To Meet the Quality Reporting Requirements

As previously noted, section 1886(j)(7)(A)(i) of the Act requires the application of a 2-percentage point reduction of the applicable market basket increase factor for IRFs that fail to comply with the quality data submission requirements. In compliance with section 1886(j)(7)(A)(i) of the Act, we propose to apply a 2-percentage point reduction to the applicable FY 2018 market basket increase factor in calculating a proposed adjusted FY 2018 standard payment conversion factor to apply to payments for only those IRFs that failed to comply with the data submission requirements. As previously noted, application of the 2-percentage point reduction may result in an update that is less than 0.0 for a fiscal year and in payment rates for a fiscal year being less than such payment rates for the preceding fiscal year. Also, reporting-based reductions to the market basket increase factor will not be cumulative; they will only apply for the FY involved.

We invite public comment on the proposed method for applying the reduction to the FY 2018 IRF increase factor for IRFs that fail to meet the quality reporting requirements.

Table 12 shows the calculation of the proposed adjusted FY 2018 standard payment conversion factor that will be used to compute IRF PPS payment rates for any IRF that failed to meet the quality reporting requirements for the applicable reporting period(s).

TABLE 12—CALCULATIONS TO DETERMINE THE PROPOSED ADJUSTED FY 2018 STANDARD PAYMENT CONVERSION FACTOR FOR IRFS THAT FAILED TO MEET THE QUALITY REPORTING REQUIREMENT

Explanation for adjustment	Calculations
Standard Payment Conversion Factor for FY 2017	$ 15,708
Increase Factor for FY 2018 (1.0 percent), as required by section 1886(j)(3)(C)(iii) of the Act, and further reduced by 2 percentage points for IRFs that failed to meet the quality reporting requirement	× 0.9900
Budget Neutrality Factor for the Wage Index and Labor-Related Share	× 1.0007
Budget Neutrality Factor for the Revisions to the CMG Relative Weights	× 0.9974
Adjusted FY 2018 Standard Payment Conversion Factor	= $ 15,521

XIII. Request for Information on CMS Flexibilities and Efficiencies

CMS is committed to transforming the health care delivery system—and the Medicare program—by putting an additional focus on patient-centered care and working with providers, physicians, and patients to improve outcomes. We seek to reduce burdens for hospitals, physicians, and patients, improve the quality of care, decrease costs, and ensure that patients and their providers and physicians are making the best health care choices possible. These are the reasons we are including this Request for Information in this proposed rule.

As we work to maintain flexibility and efficiency throughout the Medicare program, we would like to start a national conversation about improvements that can be made to the health care delivery system that reduce unnecessary burdens for clinicians, other providers, and patients and their families. We aim to increase quality of care, lower costs, improve program integrity, and make the health care system more effective, simple and accessible.

We would like to take this opportunity to invite the public to submit their ideas for regulatory, subregulatory, policy, practice, and procedural changes to better accomplish these goals. Ideas could include payment system redesign, elimination or streamlining of reporting, monitoring and documentation requirements, aligning Medicare requirements and processes with those from Medicaid and other payers, operational flexibility, feedback mechanisms and data sharing that would enhance patient care, support of the physician-patient relationship in care delivery, and facilitation of individual preferences. Responses to this Request for Information could also include recommendations regarding when and how CMS issues regulations and policies and how CMS can simplify rules and policies for beneficiaries, clinicians, physicians, providers, and suppliers. Where practicable, data and specific examples would be helpful. If the proposals involve novel legal questions, analysis regarding CMS' authority is welcome for CMS' consideration. We are particularly interested in ideas for incentivizing organizations and the full range of relevant professionals and paraprofessionals to provide screening, assessment and evidence-based treatment for individuals with opioid use disorder and other substance use disorders, including reimbursement methodologies, care coordination, systems and services integration, use of paraprofessionals including community paramedics and other strategies. We are requesting commenters to provide clear and concise proposals that include data and specific examples that could be implemented within the law.

We note that this is a Request for Information only. Respondents are encouraged to provide complete but concise responses. This Request for Information is issued solely for information and planning purposes; it does not constitute a Request for Proposal (RFP), applications, proposal abstracts, or quotations. This Request for Information does not commit the U.S. Government to contract for any supplies or services or make a grant award. Further, CMS is not seeking proposals through this Request for Information and will not accept unsolicited proposals. Responders are advised that the U.S. Government will not pay for any information or administrative costs incurred in response to this Request for Information; all costs associated with responding to this Request for Information will be solely at the interested party's expense. We note that not responding to this Request for Information does not preclude participation in any future procurement, if conducted. It is the responsibility of the potential responders to monitor this Request for Information announcement for additional information pertaining to this request. In addition, we note that CMS will not respond to questions about the policy issues raised in this Request for Information. CMS will not respond to comment submissions in response to this Request for Information in the FY 2018 IRF PPS final rule. Rather, CMS will actively consider all input as we develop future regulatory proposals or future subregulatory policy guidance. CMS may or may not choose to contact individual responders. Such communications would be for the sole purpose of clarifying statements in the responders' written responses. Contractor support personnel may be used to review responses to this Request for Information. Responses to this notice are not offers and cannot be accepted by the Government to form a binding contract or issue a grant. Information obtained as a result of this Request for Information may be used by the Government for program planning on a nonattribution basis. Respondents should not include any information that might be considered proprietary or confidential. This Request for Information should not be construed as a commitment or authorization to incur cost for which reimbursement would be required or sought. All submissions become U.S. Government property and will not be returned. CMS may publically post the public comments received, or a summary of those public comments.

XIV. Collection of Information Requirements

A. Statutory Requirement for Solicitation of Comments

Under the Paperwork Reduction Act of 1995 (PRA), we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the OMB for review and approval. To fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

This proposed rule makes reference to associated information collections that are not discussed in the regulation text contained in this document.

B. Collection of Information Requirements for Updates Related to the IRF QRP

Failure to submit data required under section 1886(j)(7)(C) and (F) of the Act will result in the reduction of the annual update to the standard federal rate for discharges occurring during such fiscal year by 2 percentage points for any IRF that does not comply with the requirements established by the Secretary. At the time that this analysis was prepared, 80, or approximately 7 percent, of the 1137 active Medicare-certified IRFs did not receive the full annual percentage increase for the FY 2017 annual payment update determination. Information is not available to determine the precise number of IRFs that will not meet the requirements to receive the full annual percentage increase for the FY 2018 payment determination.

We believe that the burden associated with the IRF QRP is the time and effort associated with data collection and reporting. As of February 1, 2017, there are approximately 1137 IRFs currently reporting quality data to CMS. For the purposes of calculating the costs associated with the collection of information requirements, we obtained mean hourly wages for these staff from the U.S. Bureau of Labor Statistics' May 2016 National Occupational Employment and Wage Estimates (*http://www.bls.gov/oes/current/oes_nat.htm*). To account for overhead and fringe benefits, we have doubled the hourly wage. These amounts are detailed in Table 13.

TABLE 13—U.S. BUREAU OF LABOR STATISTICS' MAY 2016 NATIONAL OCCUPATIONAL EMPLOYMENT AND WAGE ESTIMATES

Occupation title	Occupation code	Mean hourly wage ($/hr)	Fringe benefit ($/hr)	Adjusted hourly wage ($/hr)
Registered Nurse (RN)	29–1141	34.70	34.70	69.40
Licensed Practical and Licensed Vocational Nurses (LVN)	29–2061	21.56	21.56	43.12
Respiratory Therapists (RT)	29–1126	29.15	29.15	58.30
Speech-Language Pathologists (SLP)	29–1127	37.60	37.60	75.20
Occupational Therapists (OT)	29–1122	40.25	40.25	80.50
Psychologist	19–3030	38.77	38.77	77.54

As discussed elsewhere, this rule proposes to: (1) Adopt one new pressure ulcer measure that has been specified under section 1899B(c)(1)(C) of the Act, beginning with the FY 2020 IRF QRP (see section XII.G.1 of this proposed rule). The measure would be calculated using data elements that are currently included in the IRF–PAI. The data elements are discrete questions and response codes that collect information on an IRF patient's health status, preferences, goals and general administrative information.

We are also proposing to require IRFs to report certain standardized patient assessment data beginning with the FY 2019 IRF QRP (see section XII.J of this proposed rule). We are proposing to define the term ''standardized patient assessment data'' as patient assessment questions and response options that are identical in all four PAC assessment instruments, and to which identical standards and definitions apply. The standardized patient assessment data is intended to be shared electronically among PAC providers and will otherwise enable the data to be comparable for various purposes, including the development of cross-setting quality measures and to inform payment models that take into account patient characteristics rather than setting.

Pursuant to 1899B(m) of the Act, the Paperwork Reduction Act does not apply to the specific changes in the collections of information described in this proposed rule.

These changes to the collections of information arise from Section 2(a) of the IMPACT Act, which added new section 1899B to the Act. That section requires IRFs to report standardized patient assessment data, data on quality measures, and data on resource use and other measures. All of this data must, under section 1899B(a)(1)(B) of the Act, be standardized and interoperable to allow for its exchange among PAC providers and other providers and the use by such providers in order to provide access to longitudinal information to facilitate coordinated care and improved Medicare beneficiary outcomes. Section 1899B(a)(1)(C) of the Act requires us to modify the IRF–PAI to allow for the submission of quality measure data and standardized patient assessment data to enable its comparison across IRFs and other providers.

As noted in section VIII, we are also proposing to remove item 27 (Swallowing Status) from the IRF–PAI, on admission and discharge.

We are also proposing to remove the All-Cause Unplanned Readmission Measure for 30 Days Post-Discharge from IRFs (NQF #2502). This is a claims-based measure, and IRFs will still be required to submit the claims on which this measure is calculated. Therefore, we believe the IRF QRP burden estimate is unaffected by the proposed removal of this measure.

Adoption of the Changes in Skin Integrity Post-Acute Care: Pressure Ulcer/Injury measure would result in the removal of some data items related to pressure ulcer assessment that we believe are duplicative or no longer necessary. As a result, the estimated burden and cost for IRFs to report the updated version of the measure would be reduced from the burden and cost to report the current version of the measure. Specifically, we believe that there will be a 5 minute reduction in clinical staff time to report data, and we believe the items being removed would be completed by RNs. In addition, the removal of item 27 (Swallowing Status) on both admission and discharge will result in a 0.5 minute reduction in clinical staff time to report data. We believe that these swallowing items would be completed by RNs (approximately 75 percent of the time) and SLPs (approximately 25 percent of the time). We estimate 402,311 discharges from 1,137 IRFs annually. This equates to 36,878.51 hours (0.0917 hours × 402,311 discharges) decrease in burden for all IRFs. Given 5.4 minutes of RN time and 0.1 minutes of SLP time, completing an average of 354 IRF–PAIs per provider per year, and the wages listed in Table 13, we estimated the total cost would be reduced by $2,255.26 per IRF annually, or $2,564,229.74 for all IRFs annually. This decrease in burden will be accounted for in the information collection under OMB control number (0938–0842) which expires July 31, 2017. We will send the revised information collection request to OMB for review and approval.

In section XII.J. of this proposed rule, we are proposing requirements related to the reporting of standardized patient assessment data beginning with the FY 2019 IRF QRP. Some of these data elements are already included on the IRF–PAI assessment and are already included in current burden estimates. We are proposing, however, to require IRFs to report 24 new standardized patient assessment data elements on IRF admissions and 24 new standardized patient assessment data elements on IRF discharges. We estimate that it will take an IRF's clinical staff 7.2 minutes to report the data elements required on admission and 7.2 minutes to report the data elements required on discharge, for a total of 14.4 additional minutes. This equates to 96,554.64 additional burden hours per year (0.24 hours × 402,311 discharges).

We believe that the additional IRF–PAI items we are proposing would be completed by the following clinicians: RN (approximately 50 percent of the time), LVN (approximately 30 percent of the time), RT (approximately 7 percent of the time), SLP (approximately 6 percent of the time), and other therapists, including OT and psychologist (approximately 7 percent of the time). We estimate 402,311 discharges from 1,137 IRFs annually based on the numbers obtained February 1, 2017. To estimate the mean hourly wage for ''other therapists,'' we averaged the mean hourly wage of OTs and psychologists for a mean hourly rate of $39.51, doubled to $79.02 to account for overhead and fringe benefits. Individual providers determine the staffing resources necessary. Given the

clinician times and wages in Table 13, completing an average of 354 IRF–PAIs per provider per year, the total cost related to the additional standardized patient assessment data elements is estimated at $5,244.73 per IRF annually, or $5,963,253.19 for all IRFs annually. This increase in burden will be accounted for in the information collection under OMB control number (0938–0842). We will send the revised information collection request to OMB for review and approval.

In summary, given the 5.5-minute reduction in burden for items being removed from the IRF–PAI), and the 14.4 additional minutes of burden for the proposed standardized patient assessment data elements, the overall cost associated with proposed changes to the IRF QRP is estimated at an additional $2,989.47 per IRF annually, or $3,399,023.45 for all IRFs annually.

Under section 1899B(m) of the Act, the Paperwork Reduction Act does not apply to the specific changes to the collections of information described in this proposed rule. We are, however, setting out the burden as a courtesy to advise interested parties of the proposed actions' time and costs and for reference refer to section XVI of this proposed rule of the regulatory impact analysis (RIA). The requirement and burden will be submitted to OMB for review and approval when the modifications to the IRF–PAI have achieved standardization and are no longer exempt from the requirements under section 1899B(m) of the Act.

XV. Response to Public Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

XVI. Regulatory Impact Statement

We have examined the impact of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), the Congressional Review Act (5 U.S.C. 804(2)), and Executive Order 13771 on Reducing Regulation and Controlling Regulatory Costs (January 30, 2017).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). This rule does not reach the economic threshold and thus is not considered a major rule.

The RFA requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of less than $7.5 million to $38.5 million in any 1 year depending on industry classification, or by being nonprofit organizations that are not dominant in their markets. (For details, see the Small Business Administration's final rule that set forth size standards for health care industries (65 FR 69432) at *http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf,* effective March 26, 2012 and updated on February 26, 2016.) Because we lack data on individual hospital receipts, we cannot determine the number of small proprietary IRFs or the proportion of IRFs' revenue that is derived from Medicare payments. Therefore, we assume that all IRFs (an approximate total of 1,100 IRFs, of which approximately 60 percent are nonprofit facilities) are considered small entities and that Medicare payment constitutes the majority of their revenues. The HHS generally uses a revenue impact of 3 to 5 percent as a significance threshold under the RFA. We estimate that the net revenue impact of this final rule on all IRFs is to increase estimated payments by approximately 1.0 percent. The rates and policies set forth in this final rule will not have a significant impact (not greater than 3 percent) on a substantial number of small entities. Medicare Administrative Contractors are not considered to be small entities. Individuals and States are not included in the definition of a small entity. We are not preparing an analysis for the RFA because we have determined, and the Secretary certifies, that this proposed rule would not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a RIA if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area for Medicare payment regulations and has fewer than 100 beds. We are not preparing an analysis for section 1102(b) of the Act because we have determined, and the Secretary certifies, that this proposed rule would not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2017, that threshold is approximately $148 million. This proposed rule will impose no mandates on state, local, or tribal governments or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it issues a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. Since this regulation does not impose any costs on State or local governments, the requirements of Executive Order 13132 are not applicable.

Executive Order 13771, titled Reducing Regulation and Controlling Regulatory Costs, was issued on January 30, 2017. Section 2(a) of Executive Order 13771 requires an agency, unless prohibited by law, to identify at least two existing regulations to be repealed when the agency publicly proposes for notice and comment, or otherwise promulgates, a new regulation. In furtherance of this requirement, section 2(c) of Executive Order 13771 requires that the new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations. OMB's implementation guidance, issued on April 5, 2017, explains that ''Federal spending regulatory actions that cause only income transfers between taxpayers and program beneficiaries (*e.g.,* regulations

associated with . . . Medicare spending) are considered 'transfer rules' and are not covered by EO 13771. . . . However . . . such regulatory actions may impose requirements apart from transfers . . . In those cases, the actions would need to be offset to the extent they impose more than *de minimis* costs. Examples of ancillary requirements that may require offsets include new reporting or recordkeeping requirements . . . . ''

Regulatory Review Costs

If regulations impose administrative costs on private entities, such as the time needed to read and interpret this proposed rule, we should estimate the cost associated with regulatory review. Due to the uncertainty involved with accurately quantifying the number of entities that will review the rule, we assume that the total number of unique commenters on last year's proposed rule will be the number of reviewers of this proposed rule. We acknowledge that this assumption may understate or overstate the costs of reviewing this rule. It is possible that not all commenters reviewed last year's rule in detail, and it is also possible that some reviewers chose not to comment on the proposed rule. For these reasons we thought that the number of past commenters would be a fair estimate of the number of reviewers of this rule. We welcome any comments on the approach in estimating the number of entities which will review this proposed rule.

We also recognize that different types of entities are in many cases affected by mutually exclusive sections of this proposed rule, and therefore for the purposes of our estimate we assume that each reviewer reads approximately 50 percent of the rule. We seek comments on this assumption.

Using the wage information from the BLS for medical and health service managers (Code 11–9111), we estimate that the cost of reviewing this rule is $90.16 per hour, including overhead and fringe benefits *https://www.bls.gov/oes/2015/may/naics4_621100.htm.* Assuming an average reading speed, we estimate that it would take approximately 2 hours for the staff to review half of this proposed rule. For each IRF that reviews the rule, the estimated cost is $180.32 (2 hours × $90.16). Therefore, we estimate that the total cost of reviewing this regulation is $12,262 ($180.32 × 68 reviewers).

Accounting Statement

As required by OMB Circular A–4 (available at *http://www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a004/a-4.pdf*), in Table 14, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of this proposed rule. Table 14 provides our best estimate of the increase in Medicare payments under the IRF PPS as a result of the updates presented in this proposed rule based on the data for 1,137 IRFs in our database. In addition, Table 14 presents the costs associated with the proposed new IRF QRP requirements for FY 2018.

TABLE 14—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES

Category	Transfers
Change in Estimated Transfers from FY 2017 IRF PPS to FY 2018 IRF PPS	
Annualized Monetized Transfers	$80 million.
From Whom to Whom?	Federal Government to IRF Medicare Providers.
Category	Costs
FY 2018 Cost to Updating the Quality Reporting Program	
Cost for IRFs to Submit Data for the Quality Reporting Program	$3.4 million.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 412

Administrative practice and procedure, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Department of Health and Human Services proposes to amend 42 CFR chapter IV as set forth below:

PART 412—PROSPECTIVE PAYMENT SYSTEMS FOR INPATIENT HOSPITAL SERVICES

■ 1. The authority citation for part 412 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh), sec. 124 of Pub. L. 106–113 (113 Stat. 1501A–332), sec. 1206 of Pub. L. 113–67, sec. 112 of Pub. L. 113–93, and sec. 231 of Pub. L. 114–113.

■ 2. Section 412.614 is amended by revising paragraphs (d) heading, (d)(1), and (e) to read as follows:

§ 412.614 Transmission of patient assessment data.

* * * * *

(d) *Failure to submit complete and timely IRF–PAI data, as required under paragraph (c) of this section*—(1) *Medicare Part-A fee-for-service.* (i) A given Medicare Part-A fee-for-service IRF claim will not be accepted and processed for payment until a corresponding IRF–PAI has been received and accepted by CMS.

(ii) [Reserved]

* * * * *

(e) *Exemption to the consequences for transmitting the IRF–PAI data late for Medicare Part C (Medicare Advantage) patients.* CMS may waive the consequences of failure to submit complete and timely IRF–PAI data specified in paragraph (d) of this section when, due to an extraordinary situation that is beyond the control of an inpatient rehabilitation facility, the inpatient rehabilitation facility is unable to transmit the patient assessment data in accordance with paragraph (c) of this section. Only CMS can determine if a situation encountered by an inpatient rehabilitation facility is extraordinary and qualifies as a situation for waiver of the forfeiture specified in paragraph (d)(2) of this section. An extraordinary situation may be due to, but is not limited to, fires, floods, earthquakes, or similar unusual events that inflect extensive damage to an inpatient facility. An extraordinary situation may be one that produces a data transmission problem that is beyond the control of the inpatient rehabilitation facility, as well as other situations determined by CMS to be beyond the control of the inpatient rehabilitation

facility. An extraordinary situation must be fully documented by the inpatient rehabilitation facility.

§ 412.624 [Amended]

■ 3. In § 412.624—

■ a. Amend paragraph (d)(4) by removing the reference ''paragraph (e)(2), (e)(3), (e)(4) and (e)(7), of this section,'' and adding in its place the reference ''paragraph (e)(2), (3), (4) and (6), of this section,'';

■ b. Remove paragraph (e)(6);

■ c. Redesignate paragraph (e)(7) as paragraph (e)(6);

■ d. Amend newly redesignated paragraph (e)(6)(ii) by removing the reference ''paragraph (e)(7)(i)(A) and (e)(7)(i)(B) of this section'' and adding in its place the reference ''paragraph (e)(6)(i)(A) and (B) of this section''; and

■ e. Amend paragraph (f)(2)(v) by removing the reference ''paragraphs (e)(1), (e)(2), (e)(3), (e)(4), and (e)(7) of this section'' and adding in its place the reference ''paragraphs (e)(1), (2), (3), (4), and (6) of this section''.

■ 4. Section 412.634 is amended by revising paragraphs (b)(1), (c)(1), (f)(1) and (2) to read as follows:

§ 412.634 Requirements under the Inpatient Rehabilitation Facility (IRF) Quality Reporting Program (QRP).

* * * * *

(b) * * *

(1) IRFs must submit to CMS data on measures specified under section 1886(j)(7)(D), 1899B(c)(1), and 1899B(d)(1) of the Act, as applicable. Such data must be submitted in the form and manner, and at a time, specified by CMS.

* * * * *

(c) * * *

(1) An IRF may request and CMS may grant exceptions or extensions to the measures data or standardized patient assessment data reporting requirements, for one or more quarters, when there are certain extraordinary circumstances beyond the control of the IRF.

* * * * *

(f) * * *

(1) IRFs must meet or exceed two separate data completeness thresholds: One threshold set at 95 percent for completion of measures data and standardized patient assessment data collected using the IRF–PAI submitted through the QIES and a second threshold set at 100 percent for measures data collected and submitted using the CDC NHSN.

(2) These thresholds (95 percent for completion of measures data and standardized patient assessment data on the IRF–PAI; 100 percent for CDC NHSN data) will apply to all measures and standardized patient assessment data requirements adopted into the IRF QRP.

* * * * *

Dated: April 12, 2017.

Seema Verma,

Administrator, Centers for Medicare & Medicaid Services.

Approved: April 17, 2017.

Thomas E. Price,

Secretary, Department of Health and Human Services.

[FR Doc. 2017–08428 Filed 4–27–17; 4:15 pm]

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Part III

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Part 418

Medicare Program; FY 2018 Hospice Wage Index and Payment Rate Update and Hospice Quality Reporting Requirements; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 418

[CMS–1675–P]

RIN 0938–AT00

Medicare Program; FY 2018 Hospice Wage Index and Payment Rate Update and Hospice Quality Reporting Requirements

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would update the hospice wage index, payment rates, and cap amount for fiscal year (FY) 2018. Additionally, this rule proposes changes to the hospice quality reporting program, including proposing new quality measures, soliciting feedback on an enhanced data collection instrument, and describing plans to publicly display quality measures and other hospice data.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on June 26, 2017.

ADDRESSES: In commenting, please refer to file code CMS–1675–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1675–P, P.O. Box 8010, Baltimore, MD 21244–1850.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1675–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* Alternatively, you may deliver (by hand or courier) your written comments ONLY to the following addresses prior to the close of the comment period:

a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, call telephone number (410) 786–9994 in advance to schedule your arrival with one of our staff members.

Comments erroneously mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Debra Dean-Whittaker, (410) 786–0848 for questions regarding the CAHPS® Hospice Survey.

Cindy Massuda, (410) 786–0652 for questions regarding the hospice quality reporting program.

For general questions about hospice payment policy, please send your inquiry via email to: *hospicepolicy@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION: Wage index addenda will be available only through the internet on our Web site at: (*http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/Hospice/index.html.*)

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

Table of Contents

Acronyms

Because of the many terms to which we refer by acronym in this proposed rule, we are listing the acronyms used and their corresponding meanings in alphabetical order:

APU Annual Payment Update
ASPE Assistant Secretary of Planning and Evaluation
BBA Balanced Budget Act of 1997
BIPA Benefits Improvement and Protection Act of 2000
BNAF Budget Neutrality Adjustment Factor
BLS Bureau of Labor Statistics
CAHPS® Consumer Assessment of Healthcare Providers and Systems
CASPER Certification and Survey Provider Enhanced Reports
CBSA Core-Based Statistical Area
CCN CMS Certification Number
CCW Chronic Conditions Data Warehouse
CFR Code of Federal Regulations
CHC Continuous Home Care
CHF Congestive Heart Failure
CMS Centers for Medicare & Medicaid Services
COPD Chronic Obstructive Pulmonary Disease
CoPs Conditions of Participation
CPI–U Consumer Price Index-Urban Consumers
CVA Cerebral Vascular Accident
CWF Common Working File
CY Calendar Year
DME Durable Medical Equipment
DRG Diagnostic Related Group
FEHC Family Evaluation of Hospice Care
FR Federal Register
FY Fiscal Year
GAO Government Accountability Office
GIP General Inpatient Care
HCFA Healthcare Financing Administration
HHS Health and Human Services
HIS Hospice Item Set
HQRP Hospice Quality Reporting Program
ICD–9–CM International Classification of Diseases, Ninth Revision, Clinical Modification
ICD–10–CM International Classification of Diseases, Tenth Revision, Clinical Modification
ICR Information Collection Requirement
IDG Interdisciplinary Group
IMPACT Act Improving Medicare Post-Acute Care Transformation Act of 2014
IPPS Inpatient Prospective Payment System
IRC Inpatient Respite Care
LCD Local Coverage Determination
MAC Medicare Administrative Contractor
MACRA Medicare Access and CHIP Reauthorization Act of 2015
MAP Measure Applications Partnership
MedPAC Medicare Payment Advisory Commission
MFP Multifactor Productivity
MSA Metropolitan Statistical Area
NF Long Term Care Nursing Facility
NOE Notice of Election
NOTR Notice of Termination/Revocation
NP Nurse Practitioner
NPI National Provider Identifier
NQF National Quality Forum
OIG Office of the Inspector General
OACT Office of the Actuary
OMB Office of Management and Budget
PEPPER Program for Evaluating Payment Patterns Electronic Report
PRRB Provider Reimbursement Review Board
PS&R Provider Statistical and Reimbursement Report
Pub. L. Public Law
POC Plan of Care
QAPI Quality Assessment and Performance Improvement
QIO Quality Improvement Organization
RHC Routine Home Care
RN Registered Nurse
SBA Small Business Administration
SEC Securities and Exchange Commission
SIA Service Intensity Add-on
SNF Skilled Nursing Facility
TEFRA Tax Equity and Fiscal Responsibility Act of 1982
TEP Technical Expert Panel
UHDDS Uniform Hospital Discharge Data Set
U.S.C. United States Code

I. Executive Summary

A. Purpose

This rule proposes updates to the hospice payment rates for fiscal year (FY) 2018, as required under section 1814(i) of the Social Security Act (the Act). This rule also discusses and solicits comments on the source of the clinical information used to certify an individual as terminally ill (that is, having a life expectancy of 6 months or less as defined in section 1861(dd)(3)(A)) as required by section 1814(a)(7)(A) of the Act. Finally, this rule also proposes new quality measures and provides an update on the hospice quality reporting program (HQRP) consistent with the requirements of section 1814(i)(5) of the Act. In accordance with section 1814(i)(5)(A) of the Act, starting in FY 2014, hospices that fail to meet quality reporting requirements receive a 2 percentage point reduction to their payments.

B. Summary of the Major Provisions

Section III.A of this proposed rule describes monitoring activities intended to identify potential impacts related to the hospice reform policies finalized in the FY 2016 Hospice Wage Index and Payment Rate Update final rule and analyzes current trends in hospice utilization and expenditures. Section III.B.1 updates the hospice wage index with updated wage data and makes the application of the updated wage data budget neutral for all four levels of hospice care. In section III.B.2, we discuss the FY 2018 hospice payment update percentage of 1.0 percent. Sections III.B.3 and III.B.4 update the hospice payment rates and hospice cap amount for FY 2018 by the hospice payment update percentage discussed in section III.B.2.

In section III.C of this proposed rule, we discuss and solicit comments on the appropriate source(s) of the required clinical information for certification of a medical prognosis of a life expectancy of 6 months or less.

Finally, in section III.D of this proposed rule, we discuss updates to HQRP, including proposed changes to the CAHPS® Hospice Survey measures as well as the possibility of utilizing a new assessment instrument to collect quality data. In section III.D, we will also discuss proposed enhancements to the current Hospice Item Set (HIS) data collection instrument to be more in line with other post-acute care settings. The new data collection instrument would be a comprehensive patient assessment instrument, rather than the current chart abstraction tool. Additionally, in this section we discuss our plans for sharing HQRP data publicly later in Calendar Year (CY) 2017, as well as plans to provide public reporting via a Compare Site in CY 2017 and future years.

C. Summary of Impacts

TABLE 1—IMPACT SUMMARY TABLE

Provision description	Transfers
FY 2018 Hospice Wage Index and Payment Rate Update	The overall economic impact of this proposed rule is estimated to be an estimated $180 million in increased payments to hospices during FY 2018.

II. Background

A. Hospice Care

Hospice care is a comprehensive, holistic approach to treatment that recognizes that the impending death of an individual, upon his or her choice, warrants a change in the focus from curative care to palliative care for relief of pain and for symptom management. The goal of hospice care is to help terminally ill individuals continue life with minimal disruption to normal activities while remaining primarily in the home environment. A hospice uses an interdisciplinary approach to deliver medical, nursing, social, psychological, emotional, and spiritual services through a collaboration of professionals and other caregivers, with the goal of making the beneficiary as physically and emotionally comfortable as possible. Hospice is compassionate beneficiary and family/caregiver-centered care for those who are terminally ill.

Medicare regulations define ''palliative care'' as patient and family-centered care that optimizes quality of life by anticipating, preventing, and treating suffering. Palliative care throughout the continuum of illness involves addressing physical, intellectual, emotional, social, and spiritual needs and to facilitate patient autonomy, access to information, and choice (§ 418.3). Palliative care is at the core of hospice philosophy and care practices, and is a critical component of the Medicare hospice benefit. *See also* ''Medicare and Medicaid Programs: Hospice Conditions of Participation'' final rule (73 FR 32088, June 5, 2008). The goal of palliative care in hospice is to improve the quality of life of beneficiaries and their families and caregivers through early identification and management of pain and other issues associated with a life limiting condition. The hospice interdisciplinary group works with the beneficiary, family, and caregivers to develop a coordinated, comprehensive care plan; reduce unnecessary diagnostics or ineffective therapies; and maintain ongoing communication with individuals and their families about changes in their condition. The beneficiary's care plan will shift over time to meet the changing needs of the individual, family, and caregiver(s) as the individual approaches the end of life.

Medicare hospice care is palliative care for individuals with a prognosis of living 6 months or less if the terminal illness runs its normal course. When a beneficiary is terminally ill, many health problems are related to the underlying condition(s), as bodily systems are interdependent. In the 2008 Hospice Conditions of Participation final rule, we stated that ''the [hospice] medical director must consider the primary terminal condition, related diagnoses, current subjective and objective medical findings, current medication and treatment orders, and information about unrelated conditions when considering the initial certification of the terminal illness'' (73 FR 32176). As referenced in our regulations at § 418.22(b)(1), to be eligible for Medicare hospice services, the patient's attending physician (if any) and the hospice medical director must certify that the individual is ''terminally ill,'' as defined in section 1861(dd)(3)(A) of the Act and our regulations at § 418.3; that is, the individual's prognosis is for a life expectancy of 6 months or less if the terminal illness runs its normal course. The regulations at § 418.22(b)(3) require that the certification and recertification forms include a brief narrative explanation of the clinical findings that support a life expectancy of 6 months or less.

While the goal of hospice care is to allow the beneficiary to remain in his or her home, circumstances during the end-of-life may necessitate short-term inpatient admission to a hospital, skilled nursing facility (SNF), or hospice facility for necessary pain control or acute or chronic symptom management that cannot be managed in any other setting. These acute hospice care services ensure that any new or worsening symptoms are intensively addressed so that the beneficiary can return to his or her home. Limited, short-term, intermittent, inpatient respite care (IRC) is also available because of the absence or need for relief of the family or other caregivers. Additionally, an individual can receive continuous home care (CHC) during a period of crisis in which an individual requires continuous care to achieve palliation or management of acute medical symptoms so that the individual can remain at home. Continuous home care may be covered for as much as 24 hours a day, and these periods must be predominantly nursing care, in accordance with our regulations at § 418.204. A minimum of 8 hours of nursing care, or nursing and aide care, must be furnished on a particular day to qualify for the continuous home care rate (§ 418.302(e)(4)).

Hospices are expected to comply with all civil rights laws, including the provision of auxiliary aids and services to ensure effective communication with patients and patient care representatives with disabilities consistent with section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act. Additionally, they must provide language access for such persons who are limited in English proficiency, consistent with Title VI of the Civil Rights Act of 1964. Further information about these requirements may be found at *http://www.hhs.gov/ocr/civilrights.*

B. History of the Medicare Hospice Benefit

Before the creation of the Medicare hospice benefit, hospice programs were originally operated by volunteers who cared for the dying. During the early development stages of the Medicare hospice benefit, hospice advocates were clear that they wanted a Medicare benefit that provided all-inclusive care for terminally-ill individuals, provided pain relief and symptom management, and offered the opportunity to die with dignity in the comfort of one's home rather than in an institutional setting.[1] As stated in the August 22, 1983 proposed rule entitled ''Medicare Program; Hospice Care'' (48 FR 38146), ''the hospice experience in the United States has placed emphasis on home care. It offers physician services, specialized nursing services, and other forms of care in the home to enable the terminally ill individual to remain at home in the company of family and friends as long as possible.'' The concept of a beneficiary ''electing'' the hospice benefit and being certified as terminally ill were two key components of the legislation responsible for the creation of the Medicare Hospice

[1] Connor, Stephen. (2007). Development of Hospice and Palliative Care in the United States. OMEGA. 56(1), p. 89–99.

Benefit (section 122 of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), (Pub. L. 97–248)). Section 122 of TEFRA created the Medicare Hospice benefit, which was implemented on November 1, 1983. Under sections 1812(d) and 1861(dd) of the Act, we provide coverage of hospice care for terminally ill Medicare beneficiaries who elect to receive care from a Medicare-certified hospice. Our regulations at § 418.54(c) stipulate that the comprehensive hospice assessment must identify the beneficiary's physical, psychosocial, emotional, and spiritual needs related to the terminal illness and related conditions, and address those needs in order to promote the beneficiary's well-being, comfort, and dignity throughout the dying process. The comprehensive assessment must take into consideration the following factors: The nature and condition causing admission (including the presence or lack of objective data and subjective complaints); complications and risk factors that affect care planning; functional status; imminence of death; and severity of symptoms (§ 418.54(c)). The Medicare hospice benefit requires the hospice to cover all reasonable and necessary palliative care related to the terminal prognosis, as well as, care for interventions to manage pain and symptoms, as described in the beneficiary's plan of care. Additionally, the hospice Conditions of Participation (CoPs) at § 418.56(c) require that the hospice must provide all reasonable and necessary services for the palliation and management of the terminal illness, related conditions, and interventions to manage pain and symptoms. Therapy and interventions must be assessed and managed in terms of providing palliation and comfort without undue symptom burden for the hospice patient or family.[2] In the December 16, 1983 Hospice final rule (48 FR 56010), regarding what is related versus unrelated to the terminal illness, we stated: ''. . . we believe that the unique physical condition of each terminally ill individual makes it necessary for these decisions to be made on a case by case basis. It is our general view that hospices are required to provide virtually all the care that is needed by terminally ill patients.'' Therefore, unless there is clear evidence that a condition is unrelated to the terminal prognosis, all conditions are considered to be related to the terminal prognosis and the responsibility of the hospice to address and treat.

As stated in the December 16, 1983 Hospice final rule, the fundamental premise upon which the hospice benefit was designed was the ''revocation'' of traditional curative care and the ''election'' of hospice care for end-of-life symptom management and maximization of quality of life (48 FR 56008). After electing hospice care, the beneficiary typically returns home from an institutional setting or remains in the home, to be surrounded by family and friends, and to prepare emotionally and spiritually, if requested, for death while receiving expert symptom management and other supportive services. Election of hospice care also requires waiving the right to Medicare payment for curative treatment for the terminal prognosis, and instead receiving palliative care to manage pain or other symptoms.

The benefit was originally designed to cover hospice care for a finite period of time that roughly corresponded to a life expectancy of 6 months or less. Initially, beneficiaries could receive three election periods: Two 90-day periods and one 30-day period. Currently, Medicare beneficiaries can elect hospice care for two 90-day periods and an unlimited number of subsequent 60-day periods; however, at the beginning of each period, a physician must certify that the beneficiary has a life expectancy of 6 months or less if the terminal illness runs its normal course.

C. Services Covered by the Medicare Hospice Benefit

One requirement for coverage under the Medicare Hospice benefit is that hospice services must be reasonable and necessary for the palliation and management of the terminal illness and related conditions. Section 1861(dd)(1) of the Act establishes the services that are to be rendered by a Medicare-certified hospice program. These covered services include: Nursing care; physical therapy; occupational therapy; speech-language pathology therapy; medical social services; home health aide services (now called hospice aide services); physician services; homemaker services; medical supplies (including drugs and biologicals); medical appliances; counseling services (including dietary counseling); short-term inpatient care in a hospital, nursing facility, or hospice inpatient facility (including both respite care and procedures necessary for pain control and acute or chronic symptom management); continuous home care during periods of crisis, and only as necessary to maintain the terminally ill individual at home; and any other item or service which is specified in the plan of care and for which payment may otherwise be made under Medicare, in accordance with Title XVIII of the Act.

Section 1814(a)(7)(B) of the Act requires that a written plan for providing hospice care to a beneficiary who is a hospice patient be established before care is provided by, or under arrangements made by, that hospice program and that the written plan be periodically reviewed by the beneficiary's attending physician (if any), the hospice medical director, and an interdisciplinary group (described in section 1861(dd)(2)(B) of the Act). The services offered under the Medicare hospice benefit must be available to beneficiaries as needed, 24 hours a day, 7 days a week (section 1861(dd)(2)(A)(i) of the Act). Upon the implementation of the hospice benefit, the Congress expected hospices to continue to use volunteer services, though these services are not reimbursed by Medicare (see section 1861(dd)(2)(E) of the Act). As stated in the August 22, 1983 Hospice proposed rule, the hospice interdisciplinary group should comprise paid hospice employees as well as hospice volunteers (48 FR 38149). This expectation supports the hospice philosophy of community based, holistic, comprehensive, and compassionate end-of-life care.

Before the Medicare hospice benefit was established, the Congress requested a demonstration project to test the feasibility of covering hospice care under Medicare.[3] The National Hospice Study was initiated in 1980 through a grant sponsored by the Robert Wood Johnson and John A. Hartford Foundations and CMS (then, the Health Care Financing Administration (HCFA)). The demonstration project was conducted between October 1980 and March 1983. The project summarized the hospice care philosophy and principles as the following:

- Patient and family know of the terminal condition.
- Further medical treatment and intervention are indicated only on a supportive basis.
- Pain control should be available to patients as needed to prevent rather than to just ameliorate pain.
- Interdisciplinary teamwork is essential in caring for patient and family.
- Family members and friends should be active in providing support during the death and bereavement process.

[2] Paolini, DO, Charlotte. (2001). Symptoms Management at End of Life. JAOA. 101(10). p. 609–615.

[3] Greer, D., Mor, V., Sherwood, S. (1983) National hospice study analysis plan. Journal of Chronic Diseases, Vol 36, 11, 737–780. *https://doi.org/10.1016/0021-9681(83)90069-3.*

• Trained volunteers should provide additional support as needed.

The cost data and the findings on what services hospices provided in the demonstration project were used to design the Medicare hospice benefit. The identified hospice services were incorporated into the service requirements under the Medicare hospice benefit. Importantly, in the August 22, 1983 Hospice proposed rule, we stated ''the hospice benefit and the resulting Medicare reimbursement is not intended to diminish the voluntary spirit of hospices'' (48 FR 38149).

D. Medicare Payment for Hospice Care

Sections 1812(d), 1813(a)(4), 1814(a)(7), 1814(i), and 1861(dd) of the Act, and our regulations in part 418, establish eligibility requirements, payment standards and procedures; define covered services; and delineate the conditions a hospice must meet to be approved for participation in the Medicare program. Part 418, subpart G, provides for a per diem payment in one of four prospectively-determined rate categories of hospice care (Routine Home Care (RHC), Continuous Home Care (CHC), inpatient respite care, and general inpatient care), based on each day a qualified Medicare beneficiary is under hospice care (once the individual has elected). This per diem payment is to include all of the hospice services needed to manage the beneficiary's care, as required by section 1861(dd)(1) of the Act. There has been little change in the hospice payment structure since the benefit's inception. The per diem rate based on level of care was established in 1983, and this payment structure remains today with some adjustments, as noted below:

1. Omnibus Budget Reconciliation Act of 1989

Section 6005(a) of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239) amended section 1814(i)(1)(C) of the Act and provided for the following two changes in the methodology concerning updating the daily payment rates: (1) Effective January 1, 1990, the daily payment rates for RHC and other services included in hospice care were increased to equal 120 percent of the rates in effect on September 30, 1989; and (2) the daily payment rate for RHC and other services included in hospice care for fiscal years (FYs) beginning on or after October 1, 1990, were the payment rates in effect during the previous federal fiscal year increased by the hospital market basket percentage increase.

2. Balanced Budget Act of 1997

Section 4441(a) of the Balanced Budget Act of 1997 (BBA) (Pub. L. 105–33) amended section 1814(i)(1)(C)(ii)(VI) of the Act to establish updates to hospice rates for FYs 1998 through 2002. Hospice rates were updated by a factor equal to the hospital market basket percentage increase, minus 1 percentage point. Payment rates for FYs from 2002 have been updated according to section 1814(i)(1)(C)(ii)(VII) of the Act, which states that the update to the payment rates for subsequent FYs will be the hospital market basket percentage increase for the FY. The Act requires us to use the inpatient hospital market basket to determine hospice payment rates.

3. FY 1998 Hospice Wage Index Final Rule

In the August 8, 1997 FY 1998 Hospice Wage Index final rule (62 FR 42860), we implemented a new methodology for calculating the hospice wage index based on the recommendations of a negotiated rulemaking committee. The original hospice wage index was based on 1981 Bureau of Labor Statistics hospital data and had not been updated since 1983. In 1994, because of disparity in wages from one geographical location to another, the Hospice Wage Index Negotiated Rulemaking Committee was formed to negotiate a new wage index methodology that could be accepted by the industry and the government. This Committee was composed of representatives from national hospice associations; rural, urban, large and small hospices, and multi-site hospices; consumer groups; and a government representative. The Committee decided that in updating the hospice wage index, aggregate Medicare payments to hospices would remain budget neutral to payments calculated using the 1983 wage index, to cushion the impact of using a new wage index methodology. To implement this policy, a Budget Neutrality Adjustment Factor (BNAF) was computed and applied annually to the pre-floor, pre-reclassified hospital wage index when deriving the hospice wage index, subject to a wage index floor.

4. FY 2010 Hospice Wage Index Final Rule

Inpatient hospital pre-floor and pre-reclassified wage index values, as described in the August 8, 1997 Hospice Wage Index final rule, were subject to either a budget neutrality adjustment or application of the wage index floor. Wage index values of 0.8 or greater were adjusted by the BNAF. Starting in FY 2010, a 7-year phase-out of the BNAF began (FY 2010 Hospice Wage Index final rule, (74 FR 39384, August 6, 2009)), with a 10 percent reduction in FY 2010, an additional 15 percent reduction for a total of 25 percent in FY 2011, an additional 15 percent reduction for a total 40 percent reduction in FY 2012, an additional 15 percent reduction for a total of 55 percent in FY 2013, and an additional 15 percent reduction for a total 70 percent reduction in FY 2014. The phase-out continued with an additional 15 percent reduction for a total reduction of 85 percent in FY 2015, and an additional, and final, 15 percent reduction for complete elimination in FY 2016. We note that the BNAF was an adjustment which increased the hospice wage index value. Therefore, the BNAF phase-out reduced the amount of the BNAF increase applied to the hospice wage index value. It was not a reduction in the hospice wage index value itself or in the hospice payment rates.

5. The Affordable Care Act

Starting with FY 2013 (and in subsequent FYs), the market basket percentage update under the hospice payment system referenced in sections 1814(i)(1)(C)(ii)(VII) and 1814(i)(1)(C)(iii) of the Act is subject to annual reductions related to changes in economy-wide productivity, as specified in section 1814(i)(1)(C)(iv) of the Act. In FY 2013 through FY 2019, the market basket percentage update under the hospice payment system will be reduced by an additional 0.3 percentage point (although for FY 2014 to FY 2019, the potential 0.3 percentage point reduction is subject to suspension under conditions specified in section 1814(i)(1)(C)(v) of the Act).

In addition, sections 1814(i)(5)(A) through (C) of the Act, as added by section 3132(a) of the Affordable Care Act, require hospices to begin submitting quality data, based on measures to be specified by the Secretary of the Department of Health and Human Services (the Secretary), for FY 2014 and subsequent FYs. Beginning in FY 2014, hospices that fail to report quality data will have their market basket percentage increase reduced by 2 percentage points.

Section 1814(a)(7)(D)(i) of the Act, as added by section 3132(b)(2) of the Affordable Care Act, requires, effective January 1, 2011, that a hospice physician or nurse practitioner have a face-to-face encounter with the beneficiary to determine continued eligibility of the beneficiary's hospice care prior to the 180th-day

recertification and each subsequent recertification, and to attest that such visit took place. When implementing this provision, we finalized in the CY 2011 Home Health Prospective Payment System final rule (75 FR 70435) that the 180th-day recertification and subsequent recertifications would correspond to the beneficiary's third or subsequent benefit periods. Further, section 1814(i)(6) of the Act, as added by section 3132(a)(1)(B) of the Affordable Care Act, authorizes the Secretary to collect additional data and information determined appropriate to revise payments for hospice care and other purposes. The types of data and information suggested in the Affordable Care Act could capture accurate resource utilization, which could be collected on claims, cost reports, and possibly other mechanisms, as the Secretary determined to be appropriate. The data collected could be used to revise the methodology for determining the payment rates for RHC and other services included in hospice care, no earlier than October 1, 2013, as described in section 1814(i)(6)(D) of the Act. In addition, we were required to consult with hospice programs and the Medicare Payment Advisory Commission (MedPAC) regarding additional data collection and payment revision options.

6. FY 2012 Hospice Wage Index Final Rule

When the Medicare Hospice benefit was implemented, the Congress included an aggregate cap on hospice payments, which limits the total aggregate payments any individual hospice can receive in a year. The Congress stipulated that a ''cap amount'' be computed each year. The cap amount was set at $6,500 per beneficiary when first enacted in 1983 and has been adjusted annually by the change in the medical care expenditure category of the consumer price index for urban consumers from March 1984 to March of the cap year (section 1814(i)(2)(B) of the Act). The cap year was defined as the period from November 1st to October 31st. In the August 4, 2011 FY 2012 Hospice Wage Index final rule (76 FR 47308 through 47314) for the 2012 cap year and subsequent cap years, we announced that subsequently, the hospice aggregate cap would be calculated using the patient-by-patient proportional methodology, within certain limits. We allowed existing hospices the option of having their cap calculated via the original streamlined methodology, also within certain limits. As of FY 2012, new hospices have their cap determinations calculated using the patient-by-patient proportional methodology. The patient-by-patient proportional methodology and the streamlined methodology are two different methodologies for counting beneficiaries when calculating the hospice aggregate cap. A detailed explanation of these methods is found in the August 4, 2011 FY 2012 Hospice Wage Index final rule (76 FR 47308 through 47314). If a hospice's total Medicare payments for the cap year exceed the hospice aggregate cap, then the hospice must repay the excess back to Medicare.

7. FY 2015 Hospice Wage Index and Payment Rate Update Final Rule

When electing hospice, a beneficiary waives Medicare coverage for any care for the terminal illness and related conditions except for services provided by the designated hospice and attending physician. The FY 2015 Hospice Wage Index and Payment Rate Update final rule (79 FR 50452) finalized a requirement that requires the Notice of Election (NOE) be filed within 5 calendar days after the effective date of hospice election. If the NOE is filed beyond this 5 day period, hospice providers are liable for the services furnished during the days from the effective date of hospice election to the date of NOE filing (79 FR 50474). Similar to the NOE, the claims processing system must be notified of a beneficiary's discharge from hospice or hospice benefit revocation. This update to the beneficiary's status allows claims from non-hospice providers to be processed and paid. Late filing of the NOE can result in inaccurate benefit period data and leaves Medicare vulnerable to paying non-hospice claims related to the terminal illness and related conditions and beneficiaries possibly liable for any cost-sharing of associated costs. Upon live discharge or revocation, the beneficiary immediately resumes the Medicare coverage that had been waived when he or she elected hospice. The FY 2015 Hospice Wage Index and Payment Rate Update final rule also finalized a requirement that requires hospices to file a notice of termination/revocation within 5 calendar days of a beneficiary's live discharge or revocation, unless the hospices have already filed a final claim. This requirement helps to protect beneficiaries from delays in accessing needed care (§ 418.26(e)).

A hospice ''attending physician'' is described by the statutory and regulatory definitions as a medical doctor, osteopath, or nurse practitioner whom the beneficiary identifies, at the time of hospice election, as having the most significant role in the determination and delivery of his or her medical care. Over time, we have received reports of problems with the identification of the person's designated attending physician and a third of hospice patients had multiple providers submit Part B claims as the ''attending physician,'' using a claim modifier. The FY 2015 Hospice Wage Index and Payment Rate Update final rule finalized a requirement that the election form include the beneficiary's choice of attending physician and that the beneficiary provide the hospice with a signed document when he or she chooses to change attending physicians (79 FR 50479).

Hospice providers are required to begin using a Hospice Experience of Care Survey for informal caregivers of hospice patients as of 2015. The FY 2015 Hospice Wage Index and Payment Rate Update final rule provided background and a description of the development of the Hospice Experience of Care Survey, including the model of survey implementation, the survey respondents, eligibility criteria for the sample, and the languages in which the survey is offered. The FY 2015 Hospice Rate Update final rule also set out participation requirements for CY 2015 and discussed vendor oversight activities and the reconsideration and appeals process for entities that failed to win CMS approval as vendors (79 FR 50496).

Finally, the FY 2015 Hospice Wage Index and Payment Rate Update final rule required providers to complete their aggregate cap determination not sooner than 3 months after the end of the cap year, and not later than 5 months after, and remit any overpayments. Those hospices that fail to timely submit their aggregate cap determinations will have their payments suspended until the determination is completed and received by the Medicare Administrative Contractor (MAC) (79 FR 50503).

8. IMPACT Act of 2014

The Improving Medicare Post-Acute Care Transformation Act of 2014 (Pub. L. 113–185) (IMPACT Act) became law on October 6, 2014. Section 3(a) of the IMPACT Act mandated that all Medicare certified hospices be surveyed every 3 years beginning April 6, 2015 and ending September 30, 2025. In addition, section 3(c) of the IMPACT Act requires medical review of hospice cases involving beneficiaries receiving more than 180 days care in select hospices that show a preponderance of such patients; section 3(d) of the IMPACT Act contains a new provision

mandating that the cap amount for accounting years that end after September 30, 2016, and before October 1, 2025 be updated by the hospice payment update rather than using the consumer price index for urban consumers (CPI–U) for medical care expenditures.

9. FY 2016 Hospice Wage Index and Payment Rate Update Final Rule

In the FY 2016 Hospice Rate Update final rule, we created two different payment rates for RHC that resulted in a higher base payment rate for the first 60 days of hospice care and a reduced base payment rate for subsequent days of hospice care (80 FR 47172). We also created a Service Intensity Add-on (SIA) payment payable for services during the last 7 days of the beneficiary's life, equal to the CHC hourly payment rate multiplied by the amount of direct patient care provided by a registered nurse (RN) or social worker that occurs during the last 7 days (80 FR 47177).

In addition to the hospice payment reform changes discussed, the FY 2016 Hospice Wage Index and Payment Rate Update final rule implemented changes mandated by the IMPACT Act, in which the cap amount for accounting years that end after September 30, 2016 and before October 1, 2025 is updated by the hospice payment update percentage rather than using the CPI–U. This was applied to the 2016 cap year, starting on November 1, 2015 and ending on October 31, 2016. In addition, we finalized a provision to align the cap accounting year for both the inpatient cap and the hospice aggregate cap with the fiscal year for FY 2017 and later (80 FR 47186). This allows for the timely implementation of the IMPACT Act changes while better aligning the cap accounting year with the timeframe described in the IMPACT Act.

Finally, the FY 2016 Hospice Wage Index and Payment Rate Update final rule clarified that hospices must report all diagnoses of the beneficiary on the hospice claim as a part of the ongoing data collection efforts for possible future hospice payment refinements. Reporting of all diagnoses on the hospice claim aligns with current coding guidelines as well as admission requirements for hospice certifications.

10. FY 2017 Hospice Wage Index and Payment Rate Update Final Rule

In the FY 2017 Hospice Wage Index and Payment Rate Update final rule, we finalized several new policies and requirements related to the HQRP. First, we codified our policy that if the National Quality Forum (NQF) makes non-substantive changes to specifications for HQRP measures as part of the NQF's re-endorsement process, we will continue to utilize the measure in its new endorsed status, without going through new notice-and-comment rulemaking (81 FR 52160). We will continue to use rulemaking to adopt substantive updates made by the NQF to the endorsed measures we have adopted for the HQRP; determinations about what constitutes a substantive versus non-substantive change will be made on a measure-by-measure basis. Second, we finalized two new quality measures for the HQRP for the FY 2019 payment determination and subsequent years: Hospice Visits when Death is Imminent Measure Pair and Hospice and Palliative Care Composite Process Measure-Comprehensive Assessment at Admission (81 FR 52173). The data collection mechanism for both of these measures is the HIS, and the measures are effective April 1, 2017. Regarding the CAHPS® Hospice Survey, we finalized a policy that hospices that receive their CMS Certification Number (CCN) after January 1, 2017 for the FY 2019 Annual Payment Update (APU) and January 1, 2018 for the FY 2020 APU will be exempted from the Hospice CAHPS® requirements due to newness (81 FR 52182). The exemption is determined by CMS and is for 1 year only.

E. Trends in Medicare Hospice Utilization

Since the implementation of the hospice benefit in 1983, and especially within the last decade, there has been substantial growth in hospice benefit utilization. The number of Medicare beneficiaries receiving hospice services has grown from 513,000 in FY 2000 to nearly 1.4 million in FY 2016. Similarly, Medicare hospice expenditures have risen from $2.8 billion in FY 2000 to approximately $16.5 billion in FY 2016. Our Office of the Actuary (OACT) projects that hospice expenditures are expected to continue to increase, by approximately 7 percent annually, reflecting an increase in the number of Medicare beneficiaries, more beneficiary awareness of the Medicare Hospice Benefit for end-of-life care, and a growing preference for care provided in home and community-based settings.

There have also been changes in the diagnosis patterns among Medicare hospice enrollees. Specifically, as described in Table 2, there have been notable increases between 2002 and 2016 in neurologically-based diagnoses, including diagnoses of Alzheimer's disease. Additionally, there have been significant increases in the use of non-specific, symptom-classified diagnoses, such as ''debility'' and ''adult failure to thrive.'' In FY 2013, ''debility'' and ''adult failure to thrive'' were the first and sixth most common hospice claims-reported diagnoses, respectively, accounting for approximately 14 percent of all diagnoses. Effective October 1, 2014, hospice claims are returned to the provider if ''debility'' and ''adult failure to thrive'' are coded as the principal hospice diagnosis as well as other ICD–9–CM (and as of October 1, 2015, ICD–10–CM) codes that are not permissible as principal diagnosis codes per ICD–9–CM (or ICD–10–CM) coding guidelines. In the FY 2015 Hospice Wage Index and Payment Rate Update final rule (79 FR 50452), we reminded the hospice industry that this policy would go into effect and claims would start to be returned to the provider effective October 1, 2014. As a result of this, there has been a shift in coding patterns on hospice claims. For FY 2016, the most common hospice principal diagnoses were Alzheimer's disease, Heart Failure, Chronic Obstructive Pulmonary Disease, Lung Cancer, and Senile Degeneration of the Brain, which constituted approximately 30 percent of all claims-reported principal diagnosis codes reported in FY 2016 (see Table 2).

TABLE 2—THE TOP TWENTY PRINCIPAL HOSPICE DIAGNOSES, FY 2002, FY 2007, FY 2013, FY 2016

Rank	ICD–9/Reported Principal Diagnosis		Count	Percentage
Year: FY 2002				
1	162.9	Lung Cancer	73,769	11
2	428.0	Congestive Heart Failure	45,951	7
3	799.3	Debility Unspecified	36,999	6
4	496	COPD	35,197	5
5	331.0	Alzheimer's Disease	28,787	4

TABLE 2—THE TOP TWENTY PRINCIPAL HOSPICE DIAGNOSES, FY 2002, FY 2007, FY 2013, FY 2016—Continued

6	436	CVA/Stroke	26,897	4
7	185	Prostate Cancer	20,262	3
8	783.7	Adult Failure To Thrive	18,304	3
9	174.9	Breast Cancer	17,812	3
10	290.0	Senile Dementia, Uncomp.	16,999	3
11	153.0	Colon Cancer	16,379	2
12	157.9	Pancreatic Cancer	15,427	2
13	294.8	Organic Brain Synd Nec	10,394	2
14	429.9	Heart Disease Unspecified	10,332	2
15	154.0	Rectosigmoid Colon Cancer	8,956	1
16	332.0	Parkinson's Disease	8,865	1
17	586	Renal Failure Unspecified	8,764	1
18	585	Chronic Renal Failure (End 2005)	8,599	1
19	183.0	Ovarian Cancer	7,432	1
20	188.9	Bladder Cancer	6,916	1
Year: FY 2007				
1	799.3	Debility Unspecified	90,150	9
2	162.9	Lung Cancer	86,954	8
3	428.0	Congestive Heart Failure	77,836	7
4	496	COPD	60,815	6
5	783.7	Adult Failure To Thrive	58,303	6
6	331.0	Alzheimer's Disease	58,200	6
7	290.0	Senile Dementia Uncomp.	37,667	4
8	436	CVA/Stroke	31,800	3
9	429.9	Heart Disease Unspecified	22,170	2
10	185	Prostate Cancer	22,086	2
11	174.9	Breast Cancer	20,378	2
12	157.9	Pancreas Unspecified	19,082	2
13	153.9	Colon Cancer	19,080	2
14	294.8	Organic Brain Syndrome NEC	17,697	2
15	332.0	Parkinson's Disease	16,524	2
16	294.10	Dementia in Other Diseases w/o Behavior Dist.	15,777	2
17	586	Renal Failure Unspecified	12,188	1
18	585.6	End Stage Renal Disease	11,196	1
19	188.9	Bladder Cancer	8,806	1
20	183.0	Ovarian Cancer	8,434	1
Year: FY 2013				
1	799.3	Debility Unspecified	127,415	9
2	428.0	Congestive Heart Failure	96,171	7
3	162.9	Lung Cancer	91,598	6
4	496	COPD	82,184	6
5	331.0	Alzheimer's Disease	79,626	6
6	783.7	Adult Failure to Thrive	71,122	5
7	290.0	Senile Dementia, Uncomp.	60,579	4
8	429.9	Heart Disease Unspecified	36,914	3
9	436	CVA/Stroke	34,459	2
10	294.10	Dementia in Other Diseases w/o Behavioral Dist.	30,963	2
11	332.0	Parkinson's Disease	25,396	2
12	153.9	Colon Cancer	23,228	2
13	294.20	Dementia Unspecified w/o Behavioral Dist.	23,224	2
14	174.9	Breast Cancer	23,059	2
15	157.9	Pancreatic Cancer	22,341	2
16	185	Prostate Cancer	21,769	2
17	585.6	End-Stage Renal Disease	19,309	1
18	518.81	Acute Respiratory Failure	15,965	1
19	294.8	Other Persistent Mental Dis.—classified elsewhere	14,372	1
20	294.11	Dementia In Other Diseases w/Behavioral Dist.	13,687	1
Year: FY 2016				
1	G30.9	Alzheimer's disease, unspecified	162,845	11
2	I50.9	Heart failure, unspecified	84,088	6
3	J44.9	Chronic obstructive pulmonary disease, unspecified	74,131	5
4	C34.90	Malignant Neoplasm of Unsp Part of Unsp Bronchus or Lung	57,077	4
5	G31.1	Senile degeneration of brain, not elsewhere classified	55,305	4
6	G20	Parkinson's disease	37,245	2
7	I25.10	Atherosclerotic heart disease of native coronary art without angina pectoris	33,647	2
8	J44.1	Chronic obstructive pulmonary disease with (acute) exacerbation	32,851	2
9	G30.1	Alzheimer's disease with late onset	29,223	2
10	I67.2	Cerebral atherosclerosis	27,629	2
11	C61	Malignant neoplasm of prostate	24,576	2

TABLE 2—THE TOP TWENTY PRINCIPAL HOSPICE DIAGNOSES, FY 2002, FY 2007, FY 2013, FY 2016—Continued

12	N18.6	End stage renal disease	22,261	1
13	C18.9	Malignant neoplasm of colon, unspecified	22,203	1
14	I51.9	Heart disease, unspecified	21,868	1
15	C25.9	Malignant neoplasm of pancreas, unspecified	20,400	1
16	I63.9	Cerebral infarction, unspecified	18,546	1
17	I67.9	Cerebrovascular disease, unspecified	14,879	1
18	C50.919	Malignant neoplasm of unspecified site of unspecified female breast	14,022	1
19	A41.9	Sepsis, unspecified organism	12,723	1
20	I50.22	Chronic systolic (congestive) heart failure	12,083	1

Note(s): The frequencies shown represent beneficiaries that had at least one claim with the specific ICD–9–CM/ICD–10 code reported as the principal diagnosis. Beneficiaries could be represented multiple times in the results if they have multiple claims during that time period with different principal diagnoses.

Source: FY 2002 and 2007 hospice claims data from the Chronic Conditions Data Warehouse (CCW), accessed on February 14 and February 20, 2013. FY 2013 hospice claims data from the CCW, accessed on June 26, 2014, and FY 2016 hospice claims data from the CCW, accessed and merged with ICD–10 codes on January 9, 2017.

While there has been a shift in the reporting of the principal diagnosis as a result of diagnosis clarifications, a significant proportion of hospice claims (49 percent) in FY 2014 only reported a single principal diagnosis, which may not fully explain the characteristics of Medicare beneficiaries who are approaching the end of life. To address this pattern of single diagnosis reporting, the FY 2015 Hospice Wage Index and Payment Rate Update final rule (79 FR 50498) reiterated ICD–9–CM coding guidelines for the reporting of the principal and additional diagnoses on the hospice claim. We reminded providers to report all diagnoses on the hospice claim for the terminal illness and related conditions, including those that affect the care and clinical management for the beneficiary. Additionally, in the FY 2016 Hospice Wage Index and Payment Rate Update final rule (80 FR 47201), we provided further clarification regarding diagnosis reporting on hospice claims. We clarified that hospices will report *all* diagnoses identified in the initial and comprehensive assessments on hospice claims, whether related or unrelated to the terminal prognosis of the individual, effective October 1, 2015. Analysis of FY 2016 hospice claims shows that 100 percent of hospices reported more than one diagnosis, with 86 percent submitting at least two diagnoses and 77 percent including at least three diagnoses.

III. Provisions of the Proposed Rule

A. Monitoring for Potential Impacts—Affordable Care Act Hospice Reform

1. Hospice Payment Reform: Research and Analyses

This section of the proposed rule describes current trends in hospice utilization and provider behavior, such as lengths of stay, live discharge rates, skilled visits during the last days of life, and non-hospice spending. Utilization data on these metrics were examined to determine the potential impacts related to the hospice reform policies finalized in the FY 2016 Hospice Wage Index and Payment Rate Update final rule (80 FR 47142), if any. Moreover, in response to Office of Inspector General (OIG) report ''Hospice Inappropriately Billed Medicare Over $250 Million for General Inpatient Care'' (OEI–02–10–00491) released in March 2016, which identified the drugs paid for by Part D and provided to beneficiaries during general inpatient care (GIP) stays, we have also continued to monitor non-hospice spending during a hospice election as described in this section. Additionally, we have included preliminary information on the costs of hospice care using data from the new hospice Medicare cost report, effective for cost reporting periods that began on or after October 1, 2014 (FY 2015). Section 1814(i)(6) of the Act, as amended by section 3132(a)(1)(B) of the Affordable Care Act, authorized the Secretary to collect additional data and information determined appropriate to revise payments for hospice care and other purposes, including such data sources as the Medicare cost reports. These preliminary analyses may inform future work that could include such refinements to hospice payment rates.

a. Length of Stay and Live Discharges

Hospice Length of Stay

Eligibility under the Medicare hospice benefit is predicated on the individual being certified as terminally ill. Medicare regulations at § 418.3 define ''terminally ill'' to mean that the individual has a medical prognosis that his or her life expectancy is 6 months or less if the illness runs its normal course. However, we have recognized in previous rules that prognostication is not an exact science (79 FR 50470), and thus, a beneficiary may be under a hospice election longer than 6 months, as long as there remains a reasonable expectation that the individual has a life expectancy of 6 months or less.

The number of days that a hospice beneficiary receives care under a hospice election is referred to as the hospice length of stay. Hospice length of stay can be influenced by a number of factors including disease course, timing of referral, decision to resume curative treatment, and/or stabilization or improvement where the individual is no longer certified as terminally ill. Longer lengths of stay in hospice may reflect admission to hospice earlier in the disease trajectory or miscalculation of prognosis, among other situations. Shorter lengths of stay in hospice may reflect hospice election late in the disease trajectory or a rapidly progressing acute condition. This also may be due to individual reluctance to accept that his or her condition is terminal and choose the hospice benefit; inadequate knowledge regarding the breadth of services available under hospice care; cultural, ethnic, and/or religious backgrounds inhibiting or even precluding the use of hospice services; and other reasons.[4] As such, hospice lengths of stay are variable.

We examined length of stay, meaning the number of hospice days during a single hospice election at the date of live discharge or death. We also examined total *lifetime* length of stay, which would include the sum of all days of hospice care across all hospice elections. This would mean if a beneficiary had one hospice election, was discharged alive, and then re-elected the benefit at a later date, the sum of both elections would count towards their lifetime length of stay. In FY 2016, the average length of stay in hospice was 79 days and the average *lifetime* length of stay in hospice was

[4] Vig, E., Starks, H., Taylor, J., Hopley, E., Fryer-Edwards, K. (2010). ''Why Don't Patients Enroll in Hospice? Can We Do Anything About It?'' Journal of General Internal Medicine. 25(10): 1009–19. Doi: 10.1007/s11606–010–1423–9.

96.1 days. The average length of stay remained virtually the same between FY 2015 and FY 2016, 78 days compared to 79 days, respectively. The average lifetime length of stay similarly remained virtually the same between FY 2015 and FY 2016, 95.2 and 96.1 days, respectively.

The median (50th percentile) length of stay in FY 2016 was 18 days. This means that half of hospice beneficiaries received care for fewer than 18 days and half received care for more than 18 days. While the median length of stay has remained relatively constant over the past several years, the average length of stay has typically increased from year to year.

The Medicare hospice benefit provides four levels of care: Routine home care (RHC), general inpatient care (GIP), continuous home care (CHC), and inpatient respite care (IRC). The majority of hospice patient care is provided at the RHC level of care and can be provided wherever the patient calls ''home,'' including nursing homes and assisted living facilities. As indicated in Table 3 below, most hospice care (98 percent) provided is routine home care (RHC). Approximately 56 percent of all hospice days are provided at the RHC level of care in the patient's residence whereas 41 percent is provided at the RHC level of care to patients that reside in a nursing home or assisted living facility.

TABLE 3—SHARE OF HOSPICE DAYS BY LEVEL OF CARE AND SITE OF SERVICE, FOR BENEFICIARIES DISCHARGED ALIVE OR DECEASED IN FY 2016

Level of care	Site of service	Number of hospice days	% of all hospice days
RHC	Home + Hospice Residential Facility	59,818,337	55.75
	SNF/NF	25,953,198	24.19
	Assisted Living Facility	18,182,931	16.95
	Other	1,224,979	1.14
	Total	105,179,445	98.02
GIP	Inpatient Hospital	378,792	0.35
	Inpatient Hospice Facility	1,060,487	0.99
	Skilled Nursing Facility	59,158	0.06
	Other	5,571	0.01
	Total	1,504,008	1.40
CHC	Home + Hospice Residential Facility	180,206	0.17
	SNF/NF	42,224	0.04
	Assisted Living Facility	69,849	0.07
	Other	484	0.00
	Total	292,763	0.27
IRC	Inpatient Hospital	29,895	0.03
	Inpatient Hospice Facility	111,004	0.10
	SNF/NF	185,351	0.17
	Other	1,490	0.00
	Total	327,740	0.31
Total		107,303,956	100

Source: Common Working File (CWF). All hospice claims from 2006 to 2016 were included, for beneficiaries whose final claim in FY 2016, according to through date, for a hospice discharge (excluded status code ''30'', indicating a continuing patient). Hospice days with invalid or missing site of service HCPCS code are excluded.

In addition to analyzing the hospice average and average lifetime lengths of stay, we examined the average lifetime lengths of stay associated with hospice principal diagnoses by site of service at admission in FY 2015 (see Table 4 below). We limited our analysis to those beneficiaries that were receiving RHC at admission. As noted in Table 3 above, RHC was the level of care for 98 percent of all hospice days. We found that beneficiaries with chronic, progressive neurological diseases such as Alzheimer's disease and related dementias, and Parkinson's disease had the longest average lifetime lengths of stay at 165.3 days in FY 2015. Beneficiaries with Chronic Kidney Disease and cancer had shorter average lifetime lengths of stay, 57 and 63.7 days, respectively. For all diagnoses, the average lifetime length of stay was 113.5 days in FY 2015 when level of care at admission is RHC.

TABLE 4—AVERAGE LIFETIME LENGTH OF STAY BY DIAGNOSIS AND SITE OF SERVICE ON THE DAY OF ADMISSION IN FY 2015, WHEN LEVEL OF CARE AT ADMISSION IS RHC

Primary hospice diagnosis at admission	Home + hospice residential facility		Assisted living facility		SNF + LTC or non-skilled nursing facility		Other		All sites of service	
	Number of benes	Average lifetime length of stay	Number of benes	Average lifetime length of stay	Number of benes	Average lifetime length of stay	Number of benes	Average lifetime length of stay	Number of benes	Average lifetime length of stay
All Diagnoses	576,657	106.75	101,085	159.77	208,747	106.21	9,530	90.90	897,298	113.51

TABLE 4—AVERAGE LIFETIME LENGTH OF STAY BY DIAGNOSIS AND SITE OF SERVICE ON THE DAY OF ADMISSION IN FY 2015, WHEN LEVEL OF CARE AT ADMISSION IS RHC—Continued

Primary hospice diagnosis at admission	Home + hospice residential facility		Assisted living facility		SNF + LTC or non-skilled nursing facility		Other		All sites of service	
	Number of benes	Average lifetime length of stay	Number of benes	Average lifetime length of stay	Number of benes	Average lifetime length of stay	Number of benes	Average lifetime length of stay	Number of benes	Average lifetime length of stay
Alzheimer's, Dementia, and Parkinson's ..	83,527	172.45	39,019	186.89	67,438	140.34	2,314	143.33	192,593	165.32
CVA/Stroke	32,329	95.82	9,359	98.97	23,927	77.17	971	53.56	66,668	90.06
Cancers	233,771	62.04	11,773	93.90	30,437	63.23	1,964	46.41	278,047	63.69
Chronic Kidney Disease	14,328	58.41	1,655	82.34	6,644	47.60	273	48.84	22,907	57.01
Heart (CHF and Other Heart Disease)	101,243	121.77	19,784	131.11	35,052	83.54	1,771	84.69	158,167	115.14
Lung (COPD and Pneumonias)	58,183	131.97	6,866	127.83	16,631	82.42	870	65.42	82,656	122.11
All Other Diagnoses	53,276	163.47	12,629	254.83	28,618	150.98	1,367	125.28	96,260	173.36

Source: Common Working File (CWF). All hospice claims from 2006 to 2015 were included, for beneficiaries whose final claim in FY 2015, according to through date, for a hospice discharge (excluded status code ''30'', indicating a continuing patient). Diagnosis code and site of service were determined by the first hospice claim for a beneficiary. Diagnosis categories are consistent with those outlined in Abt's 2015 technical report (*https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/Hospice/Downloads/December-2015-Technical-Report.pdf*).

Note 1: ''Other'' category includes inpatient hospital, inpatient hospice facility, LTCH, IPF, and places not otherwise specified. Although dementia was no longer a valid primary diagnosis for the hospice benefit, our study time period examines primary diagnoses dating back to 2006.

Note 2: The data used for this table spans multiple years (2006 and forward). We were not able to convert ICD–9–CM diagnosis codes to ICD–10–CM codes, given the inherent complexities with appropriately mapping ICD–9–CM codes to ICD–10–CM codes, in time for this proposed rule. Therefore, we limited this analysis to those hospice patients that were discharged (alive or deceased) in FY 2015.

As we indicated above, the average lifetime length of stay across all levels of care at admission was 96.1 days in FY 2016. However, the average lifetime length of stay was 114 days in FY 2016 when the level of care was RHC at admission (see Table 5 below). This suggests that beneficiaries not receiving RHC level of care at admission had shorter lifetime lengths of stay compared to the beneficiaries whose level of care was RHC at admission. In particular, those beneficiaries who are admitted to hospice at the GIP level of care typically are more acute and often die without transitioning to RHC and thus, have overall shorter lengths of stay. Therefore, the shorter lengths of stay for those admitted at the GIP level of care affect the overall average lifetime length of stay across all levels of care.

TABLE 5—AVERAGE LIFETIME LENGTH OF STAY LEVEL OF CARE TO RHC AT ADMISSION, FY 2015–FY 2016

	FY 2015		FY 2016	
	Number of benes	Average lifetime length of stay	Number of benes	Average lifetime length of stay
Any Level of Care at Admission	1,111,967	95.16	1,117,643	96.14
RHC at Admission	897,298	113.51	909,961	114.02

Source: Common Working File (CWF). All hospice claims from 2006 to 2016 were included, for beneficiaries whose final claim in FY 2016, according to through date, for a hospice discharge (excluded status code ''30'', indicating a continuing patient).

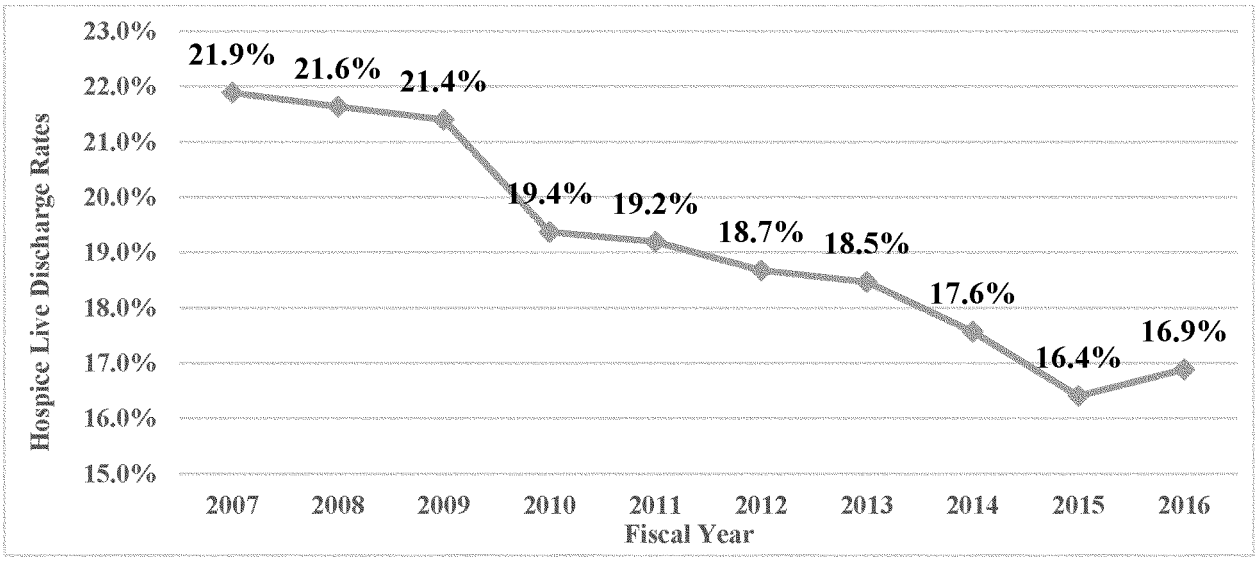
Live Discharges

A beneficiary who has elected hospice may revoke his or her hospice election at any time and for any reason. The regulations state that if the hospice beneficiary (or his or her representative) revokes the hospice election, the beneficiary may, at any time, re-elect to receive hospice coverage for any other hospice election period that he or she is eligible to receive (§ 418.24(e) and § 418.28(c)(3)). Immediately upon hospice revocation, Medicare coverage resumes for those Medicare benefits previously waived with the hospice election. A revocation can only be made by the beneficiary, in writing, and must specify the effective date of the revocation. A hospice cannot ''revoke'' a beneficiary's hospice election, nor is it appropriate for hospices to encourage, request, or demand that the beneficiary or his or her representative revoke his or her hospice election. Like the hospice election, a hospice revocation is to be an informed choice based on the beneficiary's goals, values and preferences for the services the person wishes to receive through Medicare.

Federal regulations limit the circumstances in which a Medicare hospice provider may discharge a patient from its care. In accordance with § 418.26, discharge from hospice care is permissible when the patient moves out of the provider's service area, is determined to be no longer terminally ill, or for cause. Hospices may not discharge the patient at their discretion, even if the care may be costly or inconvenient for the hospice program. As we indicated in the FY 2015 Hospice Wage Index and Payment Rate Update proposed and final rules, we understand that the rate of live discharges should not be zero, given the uncertainties of prognostication and the ability of beneficiaries and their families to revoke the hospice election at any time (79 FR 26549 and 79 FR 50463). On July 1, 2012, we began collecting discharge information on the claim to capture the reason for all types of discharges which includes, death, revocation, transfer to another hospice, moving out of the hospice's service area, discharge for cause, or due to the beneficiary no longer being considered terminally ill (that is, no longer qualifying for hospice services). In FY 2016, approximately 17 percent of hospice beneficiaries were discharged alive (see Figure 1 below). Beneficiary revocations represented 38 percent of all live discharges whereas 51 percent of live discharges were instances where the beneficiary was discharged because the beneficiary was considered no longer terminally ill, and 11 percent of live discharges were instances where beneficiaries transferred to other hospices. In analyzing hospice live discharge rates

over time, Figure 1 demonstrates an incremental decrease in average annual rates of live discharge rates from FY 2007 to FY 2015, but an increase in the live discharge rate between FY 2015 and FY 2016. Between FY 2007 and FY 2016, there has been a reduction in the live discharge rate of 22.8 percent over this time period.

Figure 1: Annual Live Discharge Rates for FY 2007 to FY 2016



Source: FY 2007 through FY 2016 hospice claims data from Common Working File (CWF). All hospice claims were examined that list a discharge status code (meaning claims were excluded if they listed status code 30, indicating a continuing patient). Live discharges were defined as hospice claims with a status code of "01".

As part of our ongoing monitoring efforts, we analyzed the distribution of live discharge rates among hospices with 50 or more discharges (discharged alive or deceased). Table 6 shows that there is significant variation in the rate of live discharge between the 10th and 90th percentiles. Most notably, hospices at the 95th percentile discharged 49.1 percent of their patients alive in FY 2016. While the live discharge rate in FY 2016 for every percentile has decreased compared to FY 2014, the median live discharge rate remains around 17 percent.

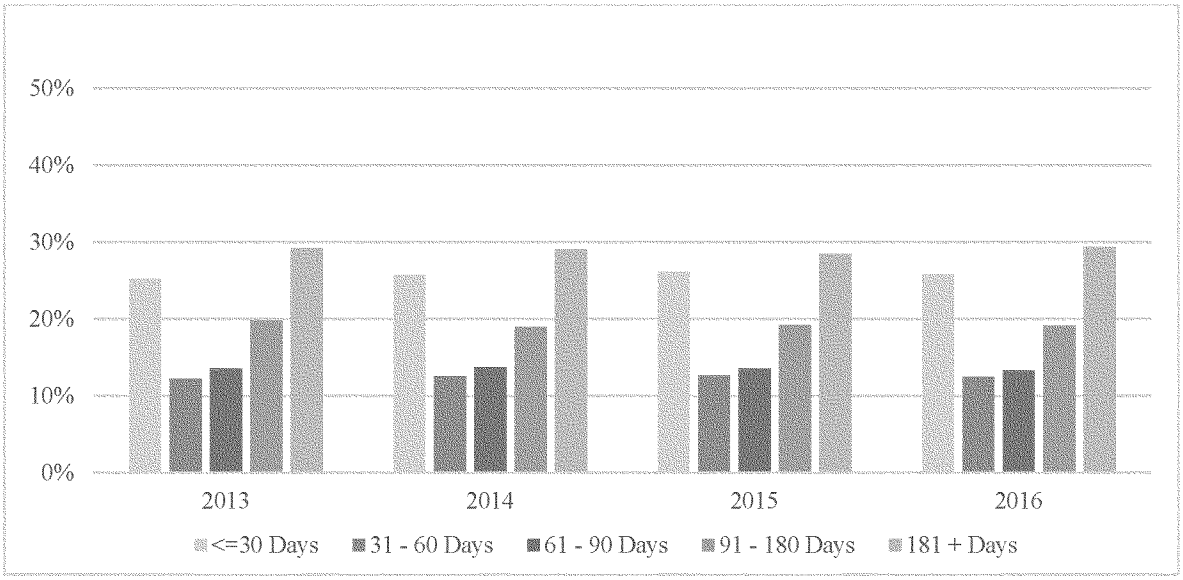
TABLE 6—DISTRIBUTION OF LIVE DISCHARGE RATES FOR HOSPICES WITH 50 OR MORE LIVE DISCHARGES, FY 2014 TO FY 2016

Statistics	Live discharge rate		
	FY 2014	FY 2015	FY 2016
5th Percentile	7.5%	6.9%	6.8%
10th Percentile	9.0%	8.5%	8.4%
25th Percentile	12.4%	11.6%	11.6%
Median	17.6%	16.8%	16.9%
75th Percentile	26.5%	24.6%	25.4%
90th Percentile	39.4%	35.9%	37.2%
95th Percentile	50.0%	45.6%	49.1%
# Providers	3,160	3,215	3,232

Source: FY 2014, FY 2015, and FY 2016 hospice claims data from Common Working File (CWF) that list a discharge status code (meaning claims were excluded if they listed status code 30, indicating a continuing patient). Live discharges were defined as hospice claims with a status code of "01".

Finally, we looked at the distribution of live discharges by length of stay intervals. In looking at the length of stay intervals, 26 percent of the live discharges occurred within 30 days of the start of hospice care, 13 percent between 31 to 60 days, 14 percent between 61 to 90 days, 19 percent between 91 to 180 days, and 28 percent of live discharges occurred after a length of stay over 180 days of hospice care (see Figure 2 below). The proportion of live discharges occurring between the length of stay intervals was relatively constant from FY 2013 to FY 2016. Overall, our analyses do not reveal any anomalies in trends in lengths of stay and rates of live discharge at this time. However, we will continue to monitor the data available so as to identify any concerning behavior in response to recent payment policy reforms.

Figure 2. Length of Stay Intervals Distribution for Live Discharges, FY 2013 to FY 2016



Source: FY 2013 – FY 2016 final hospice claims from Common Working File (CWF).

b. Skilled Visits in the Last Days of Life

As we noted in both the FY 2016 and FY 2017 Hospice Wage Index and Payment Rate Update final rules (80 FR 47164 and 81 FR 52143, respectively), we are concerned that many hospice beneficiaries may not be receiving skilled visits during the last days of life. In the period of time immediately preceding death, patient needs typically surge and more intensive services are warranted, so we expect that the provision of care would proportionately escalate in order to meet the increased clinical, emotional, and other needs of the hospice beneficiary and his or her family and caregiver(s). The last week of life is typically the period within the terminal illness trajectory that is associated with the highest symptom burden, typically marked by impactful physical and emotional symptoms, necessitating attentive care and engagement from the integrated hospice team.

In the FY 2016 Hospice Wage Index and Payment Rate Update final rule (80 FR 47164 through 47177), the Service Intensity Add-on (SIA) payment policy was finalized with an implementation date of January 1, 2016. This payment was developed in part with the objective of encouraging visits during the last days of life. Additionally, in the FY 2017 Hospice Wage Index and Payment Rate Update final rule (81 FR 52143) we finalized two new hospice quality reporting program (HQRP) measures, effective April 1, 2017: (1) Hospice Visits When Death is Imminent, assessing hospice staff visits to patients and caregivers in the last week of life; and (2) Hospice and Palliative Care Composite Process Measure, assessing the percentage of hospice patients who received care processes consistent with existing guidelines. These efforts represent meaningful advances in encouraging visits to hospice beneficiaries during the time period preceding death.

In the FY 2016 Hospice Wage Index and Payment Rate Update final rule (80 FR 47164), commenters expressed concern regarding potential impacts of the new payment policies. Some noted that the new payment structures could potentially impact patient access to hospice care and articulated concerns around provider jettisoning of hospice beneficiaries, specifically around the 60-day mark of a hospice stay. In response to these concerns, we pledged to monitor real-time hospice data, evaluating for any shifts in utilization or provision of services to Medicare beneficiaries.

As part of our monitoring efforts, we assessed the delivery of hospice care during the period of time preceding death. Analysis of FY 2016 claims data, which encompasses hospice claims from October 1, 2015 through September 30, 2016, shows that on any given day during the last 7 days of a hospice election, nearly 44 percent of the time the patient has not received a skilled visit (skilled nursing or social worker visit) (see Table 7 below). This figure represents an incremental improvement when compared to the figures presented in our FY 2017 Hospice Wage Index and Payment Rate Update proposed rule (81 FR 25515), where FY 2014 claims showed approximately 46 percent for this metric. Additionally, Table 7 shows that approximately 21 percent of beneficiaries did not receive a skilled visit (skilled nursing or social work visit) on the day of death in FY 2016. This value also indicates an improvement compared to the FY 2014 claims data, in which nearly 26 percent of hospice beneficiaries did not receive a skilled visit on the day of death (81 FR 25515).

TABLE 7—FREQUENCY AND LENGTH OF SKILLED NURSING AND SOCIAL WORK VISITS (COMBINED) DURING THE LAST 7 DAYS OF A HOSPICE ELECTION ENDING IN DEATH, FY 2016

Visit length	Days Before Death							All 7 days combined (%)
	0 days (day of death) (%)	1 day (%)	2 days (%)	3 days (%)	4 days (%)	5 days (%)	6 days (%)	
No Visit	21.2	36.7	43.7	48.9	53.1	55.8	58.0	43.6
15 Minutes to 1 Hour	25.6	30.0	28.2	26.7	25.2	24.4	23.7	26.5
1 Hour, 15 Minutes to 2 Hours	26.8	20.0	17.8	15.9	14.5	13.5	12.6	17.9
2 Hours, 15 Minutes to 3 Hours	13.8	7.1	5.8	4.9	4.3	3.9	3.5	6.6
3 Hours, 15 Minutes to 3 Hours, 45 Minutes	4.8	2.3	1.8	1.5	1.2	1.1	1.0	2.1
4 or More Hours	7.8	3.9	2.7	2.1	1.7	1.4	1.2	3.3

Source: FY 2016 hospice claims data from Common Working File (CWF) (as of December 9, 2016).

While Table 7 above shows the frequency and length of skilled nursing and social work visits combined during the last 7 days of a hospice election in FY 2016, Tables 8 and 9 below show the frequency and length of visits for skilled nursing and social work separately. Analysis of FY 2016 claims data shows that on any given day during the last 7 days of a hospice election, almost 47 percent of the time the patient had not received a visit by a skilled nurse, and 90 percent of the time the patient had not received a visit by a social worker (see Tables 8 and 9, respectively). We believe it is important to ensure that beneficiaries and their families and caregivers are, in fact, receiving the level of care necessary during critical periods such as the very end of life.

TABLE 8—FREQUENCY AND LENGTH OF SKILLED NURSING VISITS DURING THE LAST 7 DAYS OF A HOSPICE ELECTION ENDING IN DEATH, FY 2016

Visit length	Days Before Death							All 7 days combined (%)
	0 days (day of death) (%)	1 day (%)	2 days (%)	3 days (%)	4 days (%)	5 days (%)	6 days (%)	
No Visit	22.7	39.6	46.9	52.2	56.5	59.2	61.5	46.5
15 Minutes to 1 Hour	26.4	31.5	29.1	27.0	25.2	24.1	23.2	27.0
1 Hour, 15 Minutes to 2 Hours	27.3	19.0	16.8	14.9	13.4	12.5	11.5	17.2
2 Hours, 15 Minutes to 3 Hours	13.2	5.4	4.2	3.5	3.0	2.7	2.4	5.4
3 Hours, 15 Minutes to 3 Hours, 45 Minutes	4.1	1.6	1.2	0.9	0.7	0.7	0.6	1.5
4 or More Hours	6.2	2.9	1.9	1.4	1.2	1.0	0.8	2.4

Source: FY 2016 hospice claims data from Common Working File (CWF) (as of December 9, 2016).

TABLE 9—FREQUENCY AND LENGTH OF SOCIAL WORK VISITS DURING THE LAST 7 DAYS OF A HOSPICE ELECTION ENDING IN DEATH, FY 2016

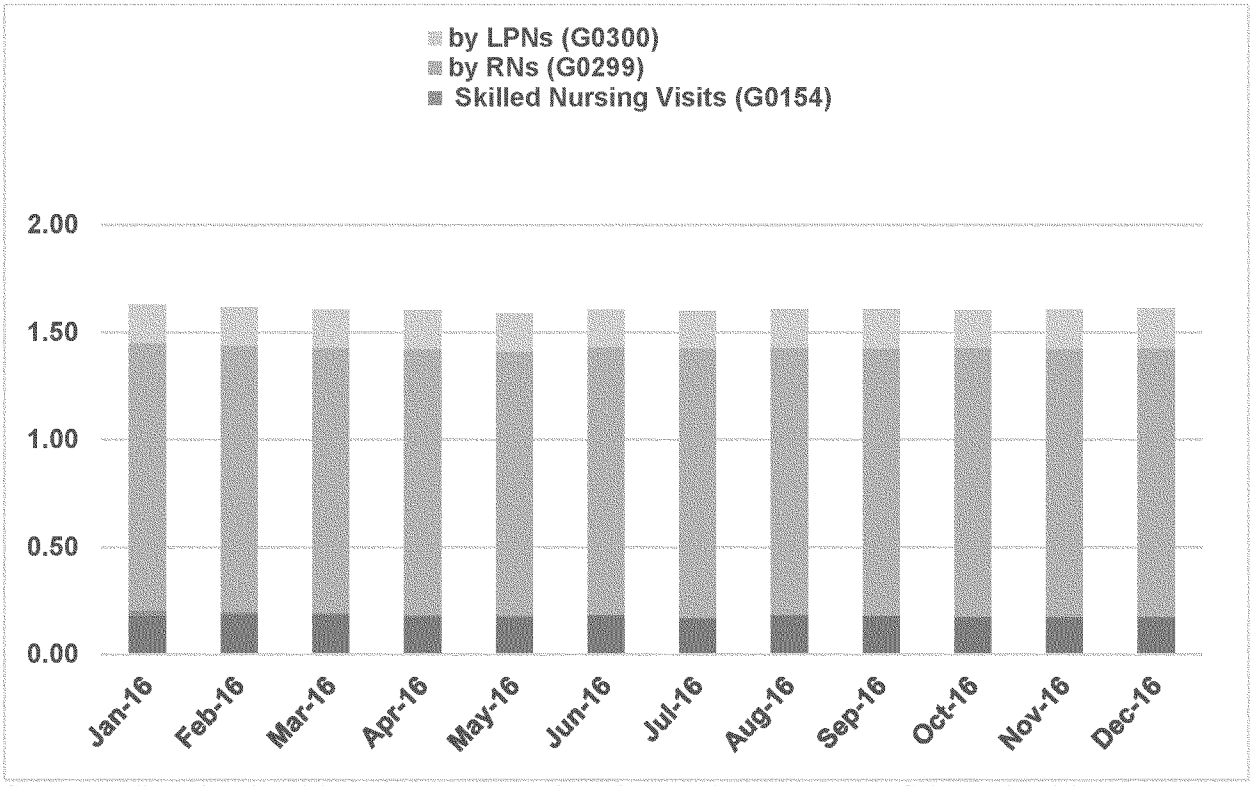
Visit length	Days Before Death							All 7 days combined
	0 days (day of death) (%)	1 day (%)	2 days (%)	3 days (%)	4 days (%)	5 days (%)	6 days (%)	
No Visit	89.9	87.1	88.6	89.7	90.5	91.1	91.4	89.6
15 Minutes to 1 Hour	6.3	8.8	7.8	7.1	6.6	6.3	6.1	7.1
1 Hour, 15 Minutes to 2 Hours	2.7	3.4	3.0	2.7	2.5	2.3	2.2	2.7
2 Hours, 15 Minutes to 3 Hours	0.7	0.5	0.4	0.4	0.3	0.3	0.3	0.4
3 Hours, 15 Minutes to 3 Hours, 45 Minutes	0.2	0.1	0.1	0.0	0.0	0.0	0.0	0.1
4 or More Hours	0.2	0.1	0.1	0.0	0.0	0.0	0.0	0.1

Source: FY 2016 hospice claims data from Common Working File (CWF) (as of December 9, 2016).

Additionally, we have analyzed the overall levels of nursing and medical social services provided during the 7 days prior to death. In an assessment of FY 2015 claims, we estimate that the total number of hours of skilled services, including skilled nursing (as reported with code G0154) and medical social services visits, provided to

Medicare hospice beneficiaries in the RHC level of care in the 7 days preceding death was approximately 1.61 hours per day. As depicted in Figure 3 below, from our analysis of FY 2016 hospice claims data that begins January 1, 2016 and spans through December 31, 2016, a relatively consistent level of nursing and medical social services visits are being provided among RHC days in the 7 days prior to death, averaging around 1.6 hours per day. For the period spanning January 1, 2016 through December 31, 2016, our analysis shows that approximately 1.24 hours of services were provided by RNs, 0.18 hours were provided by LPNs, and 0.18 hours were provided by social workers per day. We note that for purposes of the SIA payment, only those hours of service provided by an RN, which became separately categorized as G0299 beginning January 1, 2016, and medical social worker count toward the calculation of the SIA payment. Additionally, we note that G0154 was retired as of January 1, 2016; however, this code was still reported by some providers in the months of January and February 2016, and thus was included in Figure 3.

Figure 3: Visit Hours per Day in the Last Seven Days of Life, CY 2016



Source: Medicare hospice claims, January 1, 2016 through December 31, 2016; RHC days only; claims extracted on February 17, 2017 from Common Working File (CWF).

Given this evaluation of the initial wave of data, which now encompasses the payment policy changes that began on January 1, 2016, we do not believe that the results highlight any immediate concerns regarding behavior changes among hospices, and it appears that beneficiaries are receiving similar levels of care when compared to time periods prior to the implementation of the payment policy reforms. As more complete data become available, we will continue to monitor the provision of services at end-of-life and impacts of the SIA payment and other policies.

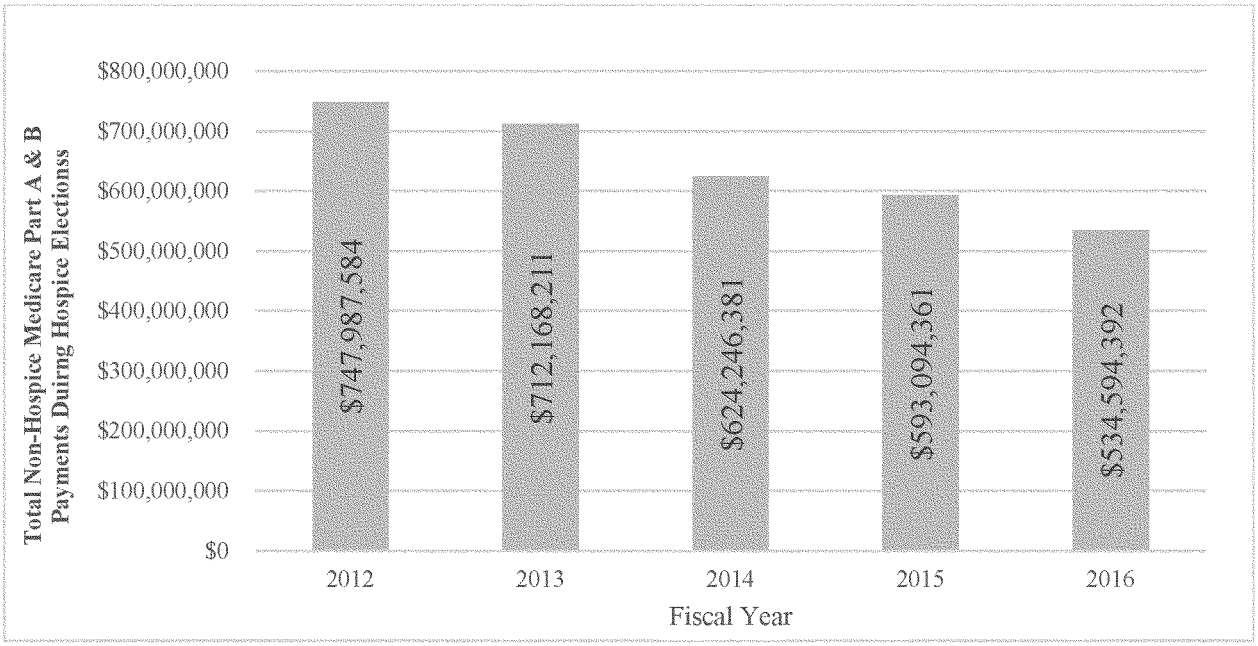
c. Non-Hospice Spending

When a beneficiary elects the Medicare hospice benefit, he or she waives the right to Medicare payment for services related to the treatment of the individual's condition with respect to which a diagnosis of terminal illness has been made, except for services provided by the designated hospice and the attending physician. Hospice services are comprehensive and we have reiterated since 1983 that ''virtually all'' care needed by the terminally ill individual would be provided by hospice. We believe that it would be unusual and exceptional to see services provided outside of hospice for those individuals who are approaching the end of life. However, we continue to conduct ongoing analysis of non-hospice spending during a hospice election and the results of our analysis seems to suggest the unbundling of items and services that perhaps should have been provided and covered under the Medicare hospice benefit.

We first reported findings on 2012 non-hospice spending during a hospice election in the FY 2015 Hospice Wage Index and Payment Rate Update final rule (79 FR 50452). This proposed rule updates our analysis of non-hospice spending during a hospice election using FY 2016 data. We found that in FY 2016, Medicare paid over $900 million for items and services under Parts A, B, and D for beneficiaries during a hospice election. Medicare payments for non-hospice Part A and Part B items and services received by hospice beneficiaries during hospice election were $748 million in FY 2012, $712 million in FY 2013, $624 million in FY 2014, $593 million in FY 2015,

and $534 million in FY 2016 (see Figure 4 below). The beneficiary cost sharing amount in FY 2016 was $129.6 million. Non-hospice spending for Part A and Part B items and services has decreased each year since we began reporting these findings. Overall, from FY 2012 to FY 2016 non-hospice Medicare spending for Parts A and B during hospice election declined 25 percent. However, there continues to be a non-trivial amount of non-hospice Parts A and B spending on beneficiaries under a hospice election, and we will continue to monitor data regarding this issue

Figure 4: Medicare Payments for Non-Hospice Medicare Part A and Part B items and services during Hospice Elections, FY 2012 – FY 2016



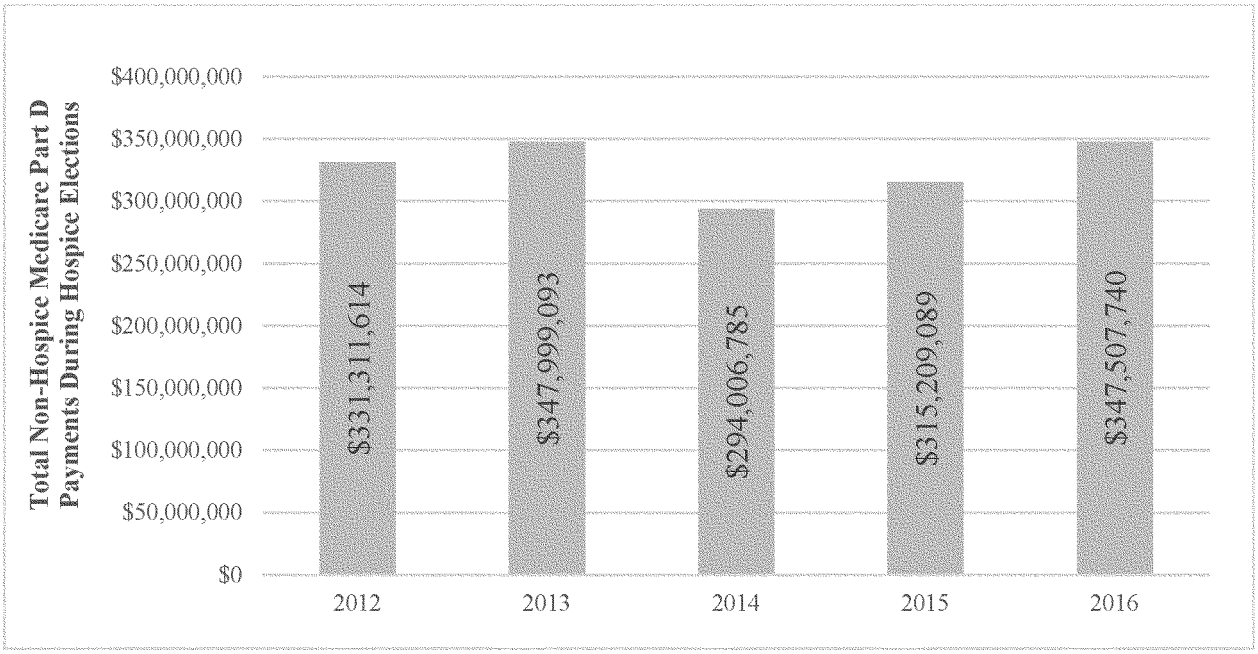
Source: Analysis of 100 percent Medicare Part A and Part B claims data from Common Working File (CWF) (final action claims), FY 2010 through FY 2016, excluding utilization on hospice admission or live discharge days.

We also examined Part D spending from FY 2012 to FY 2016 for those beneficiaries under a hospice election. The data shows Medicare payments for non-hospice Part D drugs received by hospice beneficiaries during a hospice election were $331.3 million in FY 2012, $348 million in FY 2013, $294 million in FY 2014, $315.2 million in FY 2015, and $347.5 million in FY 2016 (see Figure 5). In contrast to non-hospice spending during a hospice election for Medicare Parts A and B items and services, non-hospice spending for Part D drugs increased in FY 2016 compared to FY 2012.

Recent analyses of Part D prescription drug event (PDE) data suggest that the current prior authorization (PA) has reduced Part D program payments for drugs in four targeted categories (analgesics, anti-nauseants, anti-anxiety, and laxatives). However, under Medicare Part D there has been an increase in hospice beneficiaries filling prescriptions for a separate category of drugs we refer to as maintenance drugs, as recently analyzed by CMS.[5] Currently, maintenance drugs for beneficiaries under a hospice election are not subject to the Part D PA process. After a hospice election, many maintenance drugs as well as drugs used to treat or cure a condition are typically discontinued as the focus of care shifts to palliation and comfort measures. However, there are maintenance drugs that are appropriate to continue as they may offer symptom relief for the palliation and management of the terminal illness and related conditions, and therefore should be covered under the hospice benefit, not Part D. Examples of maintenance drugs are those used to treat high blood pressure, heart disease, asthma and diabetes. These categories include beta blockers, calcium channel blockers, corticosteroids, and insulin.

[5] *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/Hospice/Downloads/2016-11-15-Part-D-Hospice-Guidance.pdf.*

Figure 5: Medicare Payments for Non-Hospice Medicare Part D Prescription Drugs during Hospice Elections, FY 2012 - FY 2016



Source: Analysis of 100% FY 2012 through FY 2015 Part D TAP data listing a drug for a valid Generic Product Identifier (GPI).

Table 10 below details the various components of Part D spending for patients receiving hospice care for FY 2016. The portion of the $436.1 million total Part D spending that was paid by Medicare is the sum of the Low Income Cost-Sharing Subsidy (row 2 in Table 10) and the Covered Drug Plan Paid Amount (row 5), or approximately $347.5 million. The beneficiary cost sharing amount was approximately $64.9 million, including patient pay amount (row 1), other true out-of-pocket amount (row 3), and patient liability reduction due to other payer amount (row 4).

TABLE 10—DRUG COST SOURCES FOR HOSPICE BENEFICIARIES' FY 2016 DRUGS RECEIVED THROUGH PART D

Component	FY 2016 expenditures
Patient Pay Amount	$47,289,374
Low Income Cost-Sharing Subsidy	103,715,821
Other True Out-of-Pocket Amount	1,749,182
Patient Liability Reduction due to Other Payer Amount	15,868,623
Covered Drug Plan Paid Amount	243,791,919
Non-Covered Plan Paid Amount	7,878,966
Six Payment Amount Totals	420,293,884
Unknown/Unreconciled	15,836,435
Gross Total Drug Costs, Reported	436,130,318

Source: Analysis of 100% FY 2016 Medicare Claim Files. For more information on the components above and on Part D data, go to the Research Data Assistance Center's (ResDAC's) Web site at: *http://www.resdac.org/.*

Hospices are responsible for covering drugs and biologicals related to the palliation and management of the terminal illness and while the patient is under hospice care. For a prescription drug to be covered under Part D for an individual enrolled in hospice, the drug must be for treatment unrelated to the terminal illness or related conditions. After a hospice election, many maintenance drugs or drugs used to treat or cure a condition are typically discontinued as the focus of care shifts to palliation and comfort measures. However, those same drugs may be appropriate to continue as they may offer symptom relief for the palliation and management of the terminal prognosis.[5] In our ongoing analysis of non-hospice spending, we remain concerned that common palliative and other disease-specific drugs for hospice beneficiaries that should be covered under the Part A Medicare hospice benefit are instead being covered and paid for through Part D. Based on our own analysis as demonstrated in the data provided above and similar analyses conducted by the Office of the Inspector General (OIG) regarding Part D drug expenditures for Medicare hospice beneficiaries, we believe that Medicare could be paying twice for drugs that are already covered under the hospice per diem payment by also paying for them under Part D.[6]

We continue to expect that hospices should be providing virtually all of the care needed by terminally ill individuals, including related prescription drugs. The comprehensive nature of the services covered under the Medicare hospice benefit is structured such that hospice beneficiaries should not have to routinely seek items, services, and/or medications beyond those provided by hospice. The hospice medical director, the attending physician (if any), and the hospice IDG

[5] *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/Hospice/Downloads/2016-11-15-Part-D-Hospice-Guidance.pdf.*

[6] *https://oig.hhs.gov/oas/reports/region6/61000059.asp,* ''Medicare Could Be Paying Twice for Prescriptions for Beneficiaries in Hospice.''

determine, on a case-by-case basis, what items and services are related and unrelated to the palliation and management of the terminal illness and related conditions during the admission process, the initial and comprehensive assessments, and in the development of the hospice plan of care (§§ 418.25, 418.54, and 418.56).

To the extent that individuals receive services outside of the Medicare hospice benefit, Medicare coverage is determined by whether or not the services are for the treatment of a condition completely unrelated to the individual's terminal illness and related conditions (48 FR 38148). However, we have presented hospice monitoring data from the past several years, as seen above, that continue to show a non-trivial amount of items, services, and medications being furnished outside of the Medicare hospice benefit to beneficiaries under a hospice election. We encourage hospices to educate beneficiaries regarding the comprehensive nature of the hospice benefit. Although it should be rare, if any conditions are identified by the hospice as unrelated to the terminal illness and related conditions, we further encourage hospices to inform the beneficiary (or representative) at or near the time of election and provide the clinical rationale for such determinations. The regulations at § 476.78 state that providers must inform Medicare beneficiaries at the time of admission, in writing, that the care for which Medicare payment is sought will be subject to Quality Improvement Organization (QIO) review. If a beneficiary disagrees with the hospice determination of what conditions are unrelated to the terminal illness and related conditions (and thus arguably not provided as part of the hospice benefit), we strongly encourage hospices to work to resolve the disagreement with the beneficiary (or representative), taking into consideration his or her wishes, treatment preferences and goals. If a resolution cannot be reached, the beneficiary and the hospice can agree to participate in a flexible, dialogue-based resolution process, called immediate advocacy, which is coordinated by the QIO. We will continue to monitor non-hospice spending during a hospice election and consider ways to address this issue through future regulatory and/or program integrity efforts, if needed.

2. Initial Analysis of Revised Hospice Cost Report Data

a. Background

As mentioned in section II.B of this proposed rule, the Medicare hospice per diem payment amounts were developed to cover all services needed for the palliation and management of the terminal illness and related conditions, as described in section 1861(dd)(1) of the Act. Services provided under a written plan of care could include: Nursing care provided by or under the supervision of a registered professional nurse; physical therapy, occupational therapy, speech-language pathology services; counseling (including dietary counseling); medical social services under the direction of a physician; services of a home health aide; homemaker services; medical supplies (including drugs and biologicals) and the use of durable medical equipment; physician services; short-term inpatient care (including both respite care and care necessary for pain control and acute and chronic symptom management) in a qualified inpatient facility; or any other item or service which has been specified in the plan of care for which payment may be made under Medicare. Under the current payment system, hospices are paid for each day that a beneficiary is enrolled in hospice care, regardless of whether services are rendered on any given day.

As described in the FY 2016 Hospice Wage Index and Payment Rate Update final rule, we finalized changes to the hospice cost report form in order to broaden the scope and detail of data we collect regarding the costs of providing hospice care (80 FR 47150).[7] We believed that changes were needed to the hospice cost report in order to collect data on the costs of services provided at each level of care, rather than by costs per day, regardless of the level of care. The revisions to the cost report form for freestanding hospices became effective for cost reporting periods beginning on or after October 1, 2014. The instructions for completing the revised freestanding hospice cost report form are found in the Medicare Provider Reimbursement Manual—Part 2, chapter 43.[8] Medicare-certified institutional providers are required to submit an annual cost report to a Medicare Administrative Contractor (MAC). The cost report contains provider information such as facility characteristics, utilization data, costs by cost center (for all payers as well as Medicare), Medicare settlement data, and financial statement data.

b. Methodology

Section 1814(i)(6) of the Act, as amended by section 3132(a)(1)(B) of the Affordable Care Act, authorized the Secretary to collect additional data and information determined appropriate to revise payments for hospice care and other purposes. The data collected may be used to revise the methodology for determining the payment rates for RHC and other services included in hospice care. Effective October 1, 2014, we finalized changes to the hospice cost report to improve data collection on the costs of providing hospice care. We conducted a preliminary analysis of the new cost report data (CMS Form 1984–14) for freestanding hospices with cost reporting periods in FY 2015, which totaled 2,675 reports. Using this data we calculated preliminary estimates of total costs per day by level of care. It is important to note that the values we computed for cost per day include all payer sources, both Medicare and non-Medicare; however, we believe that the total cost figures represent a reasonable proxy for estimating costs related to the provision of care for Medicare beneficiaries. In order to compute total Medicare-related costs by level of care, we multiplied the computed cost per day by level of care (as reported on Worksheet C) for each hospice by the number of Medicare days by level of care. We then calculated total payments by level of care for each hospice by multiplying the FY 2015 Medicare hospice payments by level of care by the number of Medicare days by level of care. Total costs, payments, and days by level of care were summed for each unique hospice. In order to more accurately account for the hourly CHC cost per day, we used data from Medicare claims in order to quantify the hours of CHC provided by summing the hours of CHC reported in revenue center 0652, which tallies the units of CHC care. We then divided the CHC costs by the number of CHC hours as reported in revenue center 0652 to calculate a CHC per-hour value. In order to mitigate the impact of statistical outliers, we applied trims on the outer bounds of cost per day by level of care, set at the 1st and 99th percentile of the distribution.

c. Overall Payments and Costs and Costs by Level of Care

For the purposes of evaluating calculated costs per day by level of care

[7] CMS Transmittal 2864. ''Additional Data Reporting Requirements for Hospice Claims'', Available at: *https://www.cms.gov/Regulations-and-Guidance/Guidance/Transmittals/Downloads/R2864CP.pdf.*

[8] *https://www.cms.gov/Regulations-and-Guidance/Guidance/Transmittals/Downloads/R1P243.pdf.*

compared to Medicare payment amounts, we compared the reported costs on the Medicare cost report to the FY 2015 per diem payment rates by level of care, as follows (79 FR 50485). We note that these amounts were not adjusted by geographic differences in wage rates and are meant to serve as a general benchmark:

- $159.34 for RHC
- $929.91 for 24 hours of CHC (hourly rate of $38.75)
- $164.81 for IRC
- $708.77 for GIP

Table 11 shows the distribution of the calculated Average Cost Per Day by Level of Care, using data from Worksheet C—Rows 3, 8, 13, 18—Column 3.

TABLE 11—SUMMARY STATISTICS: MEDICARE COSTS PER DAY BY LEVEL OF CARE, FY 2015

Level of care	Number of cost reports	Mean	Weighted mean	Minimum value	25th Percentile	Median	75th Percentile	Maximum value	FY2015 per diem payment amounts
CHC cost per day, per hour.	1,088	$91	$49	$4	$18	$51	$95	$1,853	$929.91 for 24 hours ($38.75 hourly rate).
RHC cost per day ..	2,578	133	123	50	105	125	150	399	159.34.
IRC cost per day ...	1,930	632	467	38	221	343	549	17,813	164.81.
GIP cost per day ...	1,782	1,079	792	64	564	879	1,251	10,858	708.77.

Source: Medicare hospice cost report data for FY 2015.

As mentioned above, the data analyzed were trimmed to minimize the effect of statistical anomalies. Nevertheless, there is substantial variation in the reported cost per day by hospices. Total cost per day values in the four levels of care span from a minimum of $4 to maximum values in the tens of thousands. Because of this wide range of values in the distribution, we used the median as well as the mean values weighted by the number of days by level of care as reference points in these preliminary analyses. When compared with the FY 2015 per diem payment rates, the calculated median and weighted mean costs associated with providing RHC are lower than the base payment rates. As noted in section III.A of this proposed rule, the RHC level of care accounts for over 98 percent of all hospice days based on our analysis of claims for FY 2016. The median and weighted mean costs for the provision of RHC are estimated at $125 and $123 respectively, with both figures presenting lower values than the FY 2015 per diem payment rate of $159.34, a difference of approximately $35 per day.

Conversely, for CHC the estimated median and weighted mean costs per day, per hour are $51 and $49, respectively. The FY 2015 payment rate for CHC was $38.75 per hour. The CHC level of care accounts for approximately 0.27 percent of all hospice days in FY 2016, as noted in section III.A of this proposed rule. Similarly, the median and weighted mean costs per day associated with the provision of GIP care is estimated at $879 and $792, respectively, while the FY 2015 per diem payment amount for GIP was $708.77. As noted in section III.A of this proposed rule, the GIP level of care accounts for approximately 1.40 percent of all hospice days based on our analysis of FY 2016 claims. Likewise, the median and weighted mean costs per day associated with the IRC level of care are estimated at $343 and $467, respectively, while the per diem payment amount for FY 2015 was $164.81, and we estimate that IRC days represent approximately 0.31 percent of all hospice days in FY 2016 claims as described in section III.A above.

We recognize that this is the first period in which hospices have supplied cost information on the revised cost report that became effective for cost reporting periods beginning on or after October 1, 2014 and expect that some of the early trends may be the result of hospices learning how to accurately report this information. Therefore, any interpretations regarding the overall alignment between costs and payment would likely be premature given the newness of the data. Moreover, this preliminary analysis did not incorporate factors that merit consideration in future analyses, such as the exclusion of providers surpassing the hospice inpatient and aggregate caps as well as the application of a more robust trimming process to the cost report dataset. As we continue to gather more cost report data, we plan to conduct more thorough analyses of the cost report data and fully assess Medicare-related hospice costs as compared with Medicare hospice payments by level of care. We encourage hospices to continue to submit the most accurate data possible on Medicare cost reports.

B. Proposed FY 2018 Hospice Wage Index and Rate Update

1. Proposed FY 2018 Hospice Wage Index

The hospice wage index is used to adjust payment rates for hospice agencies under the Medicare program to reflect local differences in area wage levels, based on the location where services are furnished. The hospice wage index utilizes the wage adjustment factors used by the Secretary for purposes of section 1886(d)(3)(E) of the Act for hospital wage adjustments. Our regulations at § 418.306(c) require each labor market to be established using the most current hospital wage data available, including any changes made by OMB to the Metropolitan Statistical Areas (MSAs) definitions.

We use the previous FY's hospital wage index data to calculate the hospice wage index values. For FY 2018, the hospice wage index will be based on the FY 2017 hospital pre-floor, pre-reclassified wage index. This means that the hospital wage data used for the hospice wage index is not adjusted to take into account any geographic reclassification of hospitals including those in accordance with section 1886(d)(8)(B) or 1886(d)(10) of the Act. The appropriate wage index value is applied to the labor portion of the payment rate based on the geographic area in which the beneficiary resides when receiving routine home care (RHC) or continuous home care (CHC). The appropriate wage index value is applied to the labor portion of the

payment rate based on the geographic location of the facility for beneficiaries receiving general inpatient care (GIP) or Inpatient Respite Care (IRC).

There exist some geographic areas where there were no hospitals, and thus, no hospital wage index data on which to base the calculation of the hospice wage index. In the FY 2008 Hospice Wage Index final rule (72 FR 50214), we implemented a methodology to update the hospice wage index for such areas. In cases where there was a rural area without rural hospital wage data, we use the average pre-floor, pre-reclassified hospital wage index data from all contiguous Core-Based Statistical Areas (CBSAs), to represent a reasonable proxy for the rural area. The term ''contiguous'' means sharing a border (72 FR 50217). Currently, the only rural area without a hospital from which hospital wage data could be derived is Puerto Rico. However, for rural Puerto Rico, we would not apply this methodology due to the distinct economic circumstances that exist there (for example, due to the close proximity to one another of almost all of Puerto Rico's various urban and non-urban areas, this methodology would produce a wage index for rural Puerto Rico that is higher than that in half of its urban areas); instead, we would continue to use the most recent wage index previously available for that area. For FY 2018, we propose to continue to use the most recent pre-floor, pre-reclassified hospital wage index value available for Puerto Rico, which is 0.4047.

In the FY 2010 Hospice Wage Index final rule (74 FR 39386), we adopted the policy that for urban labor markets without a hospital from which hospital wage index data could be derived, all of the CBSAs within the state would be used to calculate a statewide urban average pre-floor, pre-reclassified hospital wage index value to use as a reasonable proxy for these areas. For FY 2018, the only CBSA without a hospital from which hospital wage data can be derived is 25980, Hinesville-Fort Stewart, Georgia.

As described in the August 8, 1997 Hospice Wage Index final rule (62 FR 42860), the pre-floor and pre-reclassified hospital wage index is used as the raw wage index for the hospice benefit. These raw wage index values are subject to application of the hospice floor to compute the hospice wage index used to determine payments to hospices. Pre-floor, pre-reclassified hospital wage index values below 0.8 are adjusted by a 15 percent increase subject to a maximum wage index value of 0.8. For example, if County A has a pre-floor, pre-reclassified hospital wage index value of 0.3994, we would multiply 0.3994 by 1.15, which equals 0.4593. Since 0.4593 is not greater than 0.8, then County A's hospice wage index would be 0.4593. In another example, if County B has a pre-floor, pre-reclassified hospital wage index value of 0.7440, we would multiply 0.7440 by 1.15 which equals 0.8556. Because 0.8556 is greater than 0.8, County B's hospice wage index would be 0.8.

On February 28, 2013, OMB issued OMB Bulletin No. 13–01, announcing revisions to the delineation of MSAs, Micropolitan Statistical Areas, and Combines Statistical Areas, and guidance on uses of the delineation in these areas. In the FY 2016 Hospice Wage Index final rule (80 FR 47178), we adopted the OMB's new area delineations using a 1-year transition. In the FY 2016 Hospice Wage Index and Payment Rate Update final rule (80 FR 47178), we stated that beginning October 1, 2016, the wage index for all hospice payments would be fully based on the new OMB delineations. The most recent bulletin (No. 15–01) concerning the revised delineations was published by the OMB on July 15, 2015.

The proposed hospice wage index applicable for FY 2018 (October 1, 2017 through September 30, 2018) is available on the Web site at: *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/Hospice/index.html.*

2. Proposed Hospice Payment Update Percentage

Section 4441(a) of the Balanced Budget Act of 1997 (BBA) (Pub. L. 105–33) amended section 1814(i)(1)(C)(ii)(VI) of the Act to establish updates to hospice rates for FYs 1998 through 2002. Hospice rates were to be updated by a factor equal to the inpatient hospital market basket percentage increase set out under section 1886(b)(3)(B)(iii) of the Act, minus 1 percentage point. Payment rates for FYs since 2002 have been updated according to section 1814(i)(1)(C)(ii)(VII) of the Act, which states that the update to the payment rates for subsequent FYs must be the inpatient market basket percentage increase for that FY. The Act historically required us to use the inpatient hospital market basket as the basis for the hospice payment rate update.

Section 3401(g) of the Affordable Care Act mandated that, starting with FY 2013 (and in subsequent FYs), the hospice payment update percentage would be annually reduced by changes in economy-wide productivity as specified in section 1886(b)(3)(B)(xi)(II) of the Act. The statute defines the productivity adjustment to be equal to the 10-year moving average of changes in annual economy-wide private nonfarm business multifactor productivity (MFP). In addition to the MFP adjustment, section 3401(g) of the Affordable Care Act also mandated that in FY 2013 through FY 2019, the hospice payment update percentage would be reduced by an additional 0.3 percentage point (although for FY 2014 to FY 2019, the potential 0.3 percentage point reduction is subject to suspension under conditions specified in section 1814(i)(1)(C)(v) of the Act).

Normally, the proposed hospice payment update percentage for FY 2018 would have been based on the estimated inpatient hospital market basket update of 2.9 percent (based on IHS Global Insight, Inc.'s fourth quarter 2016 forecast with historical data through the third quarter of 2016 of the proposed 2014-based IPPS market basket). Due to the requirements at section 1886(b)(3)(B)(xi)(II) of the Act, the estimated FY 2018 inpatient hospital market basket update of 2.9 percent would have been reduced by a MFP adjustment as mandated by Affordable Care Act (currently estimated to be 0.4 percentage point for FY 2018). Section 1814(i)(1)(C)(v) of the Act requires that the estimated inpatient hospital market basket update for FY 2018 would be reduced further by 0.3 percentage point. In effect, the proposed hospice payment update percentage for FY 2018 would be 2.2 percent. However, section 411(d) of the Medicare Access and CHIP Reauthorization Act of 2015, Public Law 114–10 (April 16, 2015) (MACRA) amended section 1814(i)(1)(C) of the Act such that for hospice payments for FY 2018, the market basket percentage increase, after application of the productivity adjustment and the 0.3 percent reduction, if applicable, shall be 1 percent. Therefore, for FY 2018, the hospice payment update percentage will be 1 percent.

Currently, the labor portion of the hospice payment rates is as follows: For RHC, 68.71 percent; for CHC, 68.71 percent; for General Inpatient Care, 64.01 percent; and for Respite Care, 54.13 percent. The non-labor portion is equal to 100 percent minus the labor portion for each level of care. Therefore, the non-labor portion of the payment rates is as follows: For RHC, 31.29 percent; for CHC, 31.29 percent; for General Inpatient Care, 35.99 percent; and for Respite Care, 45.87 percent. Beginning with cost reporting periods starting on or after October 1, 2014, freestanding hospice providers are

required to submit cost data using CMS Form 1984–14 (*https://www.cms.gov/Research-Statistics-Data-and-Systems/Downloadable-Public-Use-Files/Cost-Reports/Hospice-2014.html*). We are currently analyzing this data for possible use in updating the labor portion of the hospice payment rates. Any changes to the labor portions will be proposed in future rulemaking and will be subject to public comments.

3. Proposed FY 2018 Hospice Payment Rates

There are four payment categories that are distinguished by the location and intensity of the services provided. The base payments are adjusted for geographic differences in wages by multiplying the labor share, which varies by category, of each base rate by the applicable hospice wage index. A hospice is paid the RHC rate for each day the beneficiary is enrolled in hospice, unless the hospice provides CHC, IRC, or GIP. CHC is provided during a period of patient crisis to maintain the patient at home; IRC is short-term care to allow the usual caregiver to rest and be relieved from caregiving; and GIP is to treat symptoms that cannot be managed in another setting.

As discussed in the FY 2016 Hospice Wage Index and Payment Rate Update final rule (80 FR 47172), we implemented two different RHC payment rates, one RHC rate for the first 60 days and a second RHC rate for days 61 and beyond. In addition, in the final rule, we adopted a Service Intensity Add-on (SIA) payment for RHC for when direct patient care is provided by a RN or social worker during the last 7 days of the beneficiary's life. The SIA payment is equal to the CHC hourly rate multiplied by the hours of nursing or social work provided (up to 4 hours total) that occurred on the day of service, if certain criteria are met. In order to maintain budget neutrality, as required under section 1814(i)(6)(D)(ii) of the Act, the new RHC rates were adjusted by a SIA budget neutrality factor.

As discussed in the FY 2016 Hospice Wage Index and Payment Rate Update final rule (80 FR 47177), we will continue to make the SIA payments budget neutral through an annual determination of the SIA budget neutrality factor (SBNF), which will then be applied to the RHC payment rates. The SBNF will be calculated for each FY using the most current and complete FY utilization data available at the time of rulemaking. For FY 2018, we calculated the SBNF using FY 2016 utilization data. We examined skilled nursing and social work visit data for the last 7 days of life where RHC was billed and found that, from January 1 through September 30, 2016, approximately 86 percent of nursing visits were identified as RN visits (using G0299) and 14 percent of nursing visits were identified as LPN visits (using G0300). For skilled nursing visits during the last 7 days of life where RHC was billed and that occurred between October 1 and December 31, 2015, we assumed that 86 percent of the line item visits reported using G0154 were RN and 14 percent were LPN. For FY 2018, the budget neutrality adjustment that would apply to days 1 through 60 is calculated to be 1.0018. The budget neutrality adjustment that would apply to days 61 and beyond is calculated to be 1.0005.

In the FY 2017 Hospice Wage Index and Payment Rate Update final rule (82 FR 52156), we initiated a policy of applying a wage index standardization factor to hospice payments in order to eliminate the aggregate effect of annual variations in hospital wage data. In order to calculate the wage index standardization factor, we simulate total payments using the proposed FY 2018 hospice wage index and compare it to our simulation of total payments using the FY 2017 hospice wage index. By dividing payments for each level of care using the proposed FY 2018 wage index by payments for each level of care using the FY 2017 wage index, we obtain a wage index standardization factor for each level of care (RHC days 1–60, RHC days 61+, CHC, IRC, and GIP). The wage index standardization factors for each level of care are shown in the tables below.

Lastly, the hospice payment rates for hospices that submit the required quality data would be increased by the proposed FY 2018 hospice payment update percentage of 1.0 percent as discussed in section III.B.2. The proposed FY 2018 RHC rates are shown in Table 12. The proposed FY 2018 payment rates for CHC, IRC, and GIP are shown in Table 13.

TABLE 12—PROPOSED FY 2018 HOSPICE RHC PAYMENT RATES

Code	Description	FY 2017 payment rates	SBNF	Wage index standardization factor	FY 2018 proposed hospice payment update	FY 2018 Proposed payment rates
651	Routine Home Care (days 1–60)	$190.55	× 1.0018	× 1.0000	× 1.01	$192.80
651	Routine Home Care (days 61+)	$149.82	× 1.0005	× 1.0001	× 1.01	$151.41

TABLE 13—PROPOSED FY 2018 HOSPICE CHC, IRC, AND GIP PAYMENT RATES

Code	Description	FY 2017 payment rates	Wage index standardization factor	FY 2018 proposed hospice payment update	FY 2018 proposed payment rates
652	Continuous Home Care Full Rate = 24 hours of care $40.68 = FY 2018 hourly rate	$964.63	× 1.0022	× 1.01	$976.42
655	Inpatient Respite Care	170.97	× 1.0006	× 1.01	172.78
656	General Inpatient Care	734.94	× 1.0017	× 1.01	743.55

Sections 1814(i)(5)(A) through (C) of the Act require that hospices submit quality data, based on measures to be specified by the Secretary. In the FY 2012 Hospice Wage Index final rule (76 FR 47320 through 47324), we

implemented a Hospice Quality Reporting Program (HQRP) as required by section 3004 of the Affordable Care Act. Hospices were required to begin collecting quality data in October 2012, and submit that quality data in 2013. Section 1814(i)(5)(A)(i) of the Act requires that beginning with FY 2014 and each subsequent FY, the Secretary shall reduce the market basket update by 2 percentage points for any hospice that does not comply with the quality data submission requirements with respect to that FY. The proposed FY 2018 rates for hospices that do not submit the required quality data would be updated by the proposed FY 2018 hospice payment update percentage of 1 percent minus 2 percentage points. These rates are shown in Tables 14 and 15.

TABLE 14—PROPOSED FY 2018 HOSPICE RHC PAYMENT RATES FOR HOSPICES THAT *DO NOT* SUBMIT THE REQUIRED QUALITY DATA

Code	Description	FY 2017 payment rates	SBNF	Wage index standardization factor	FY 2018 proposed hospice payment update of 1% minus 2 percentage points = -0.1%	FY 2018 proposed payment rates
651	Routine Home Care (days 1–60)	$190.55	× 1.0018	× 1.0000	× 0.99	$188.98
651	Routine Home Care (days 61+)	$149.82	× 1.0005	× 1.0001	× 0.99	148.41

TABLE 15—PROPOSED FY 2018 HOSPICE CHC, IRC, AND GIP PAYMENT RATES FOR HOSPICES THAT *DO NOT* SUBMIT THE REQUIRED QUALITY DATA

Code	Description	FY 2017 payment rates	Wage index standardization factor	FY 2018 proposed hospice payment update	FY 2018 Proposed payment rates
652	Continuous Home Care Full Rate = 24 hours of care $39.88 = FY 2018 hourly rate	$964.63	× 1.0022	× 0.99	$957.08
655	Inpatient Respite Care	$170.97	× 1.0006	× 0.99	$169.36
656	General Inpatient Care	734.94	× 1.0017	× 0.99	728.83

4. Hospice Cap Amount for FY 2018

As discussed in the FY 2016 Hospice Wage Index and Payment Rate Update final rule (80 FR 47183), we implemented changes mandated by the Improving Medicare Post-Acute Care Transformation Act of 2014 (IMPACT Act). Specifically, for accounting years that end after September 30, 2016 and before October 1, 2025, the hospice cap is updated by the hospice payment update percentage rather than using the consumer price index for urban consumers (CPI–U). The hospice cap amount for the 2018 cap year will be $28,689.04, which is equal to the 2017 cap amount ($28,404.99) updated by the FY 2018 hospice payment update percentage of 1.0 percent.

C. Discussion and Solicitation of Comments Regarding Sources of Clinical Information for Certifying Terminal Illness

Hospice provides relief from pain and symptoms, provides psychosocial and spiritual comfort, and allows an individual to die with dignity and surrounded by family and friends. Despite the invaluable support hospices offer, it is not an easy decision and not one individuals generally arrive at on their own. Election of hospice is a significant decision and one which patients and their physicians do not take lightly, as it involves a shift in traditional health care philosophy from curative to palliative care. In general, the majority of hospice referrals do come from family physicians who have often cared for patients with chronic illnesses for long periods of time.[9] These providers are in the unique position of understanding and identifying the individualized progression of the patient's illness and recognizing when the condition becomes terminal. To be eligible to elect the Medicare hospice benefit, the individual must have Medicare Part A and be certified as terminally ill as articulated at § 418.20. The regulations define ''terminally ill'' to mean that the individual has a medical prognosis that his or her life expectancy is 6 months or less if the illness runs its normal course (§ 418.3). The regulations at § 418.22(c) require that for the initial 90-day period of hospice care, the hospice must obtain written certification statements from the medical director of the hospice or the physician member of the hospice interdisciplinary group, and the individual's attending physician, if the individual has an attending physician. The current regulations at § 418.25(b) state that in reaching a decision to certify, the hospice medical director, or hospice physician designee reviews the clinical information for each hospice patient and provides written certification that it is anticipated that the patient's life expectancy is 6 months or less if the illness runs its normal course. These regulations require that the hospice medical director consider at least the following information:

1. Diagnosis of the terminal condition of the patient.

2. Other health conditions, whether related or unrelated to the terminal condition.

3. Current clinically relevant information supporting all diagnoses.

The admission requirements at § 418.22(b)(2) require that this clinical information and other documentation that supports the medical prognosis must accompany the certification and be filed in the medical record with the

[9] Michelle T. Weckmann, MD, MS, University of Iowa Hospitals and Clinics, Iowa *The Role of the Family Physician in the Referral and Management of Hospice Patients.* Am Fam Physician, 2008 Mar 15;77(6):807–812.

written certification. Whereas the regulations at § 418.25(b) provide the type of clinical information the hospice medical director or hospice physician designee must consider in the certification of terminal illness, the source of this clinical information is not clearly identified. This raises the question as to what clinical information the hospice medical director (or hospice physician designee) is relying on to support his or her certification that the individual is terminally ill and from where this information was obtained.

Multiple clinical tools and guidelines, and more specifically the Medicare Administrative Contractor (MAC) Local Coverage Determinations (LCDs), exist to assist the patient-designated attending physician and hospice medical director/hospice physician designee in determining the patient's terminal prognosis. These guidelines provide indicators that support a decline in clinical status, including, but not limited to: History of recurrent infections, worsening symptoms that are non- responsive to treatment, increasing emergency department and clinician visits, laboratory results supporting progression of disease, and change in functional status.[10] However, documentation of these indicators would likely not exist without some degree of long-term monitoring and evaluation by a physician separate from the hospice medical director/hospice physician designee. As such, this information would typically be found in the referring physician's and/or acute/ post- acute care facility's medical records.

Understandably, many family physicians typically take on the role of the attending physician once the patient chooses to elect hospice. They have played an invaluable role in coordinating care throughout the spectrum of the patient's life, and as such, have in depth ''knowledge of the patient's values, family issues, and communication style.'' [11] However, in accordance with our regulation at § 418.22(c)(1)(ii), only the initial certification has to involve the attending physician and only IF the patient has designated one. There is currently no requirement that a patient must designate an attending physician and therefore the responsibility for certification can solely reside with the hospice medical director or the physician member of the hospice interdisciplinary group. Furthermore, this regulation does not require that the hospice medical director or physician member of the hospice interdisciplinary group designee has a face-to-face encounter with the patient when initially certifying the patient as terminally ill. Rather, a face-to-face encounter with a hospice physician or allowed non-physician practitioner is not required until the third election period and each subsequent recertification thereafter. Consequently, a patient may never be seen by the hospice physician who is certifying that he or she is terminally ill.

No visits to the patient are covered under the Medicare hospice benefit until the individual has been certified as terminally ill, an election statement has been signed, and a plan of care has been established (§ 418.200). Therefore, any information regarding the patient's health status from hospice staff (for example, registered nurses) should not be the sole documentation used to support the initial certification requirement as the patient has yet to meet the eligibility requirement. Because Medicare hospice coverage depends on being certified as terminally ill and requires an individual to waive rights to Medicare payment for services for the terminal illness and related conditions, except when provided by the designated hospice or attending physician, the expectation is that the hospice physician certifying terminal illness will be thorough and accountable in his review of clinical information. As discussed in the 1983 final rule ''Medicare Program; Hospice Care'', ''written certification is the only true assurance that the patient's condition has been assessed at or before the time of admission to a hospice program'' (48 FR 56010). This is important to both the hospice who will be assuming virtually all of the care needs of the terminally ill individual and to the patient, who must have a thorough basis for his or her decision to elect hospice rather than continue curative care.

There are ongoing concerns that some hospice patients may be inappropriately certified as terminally ill. Operation Restore Trust (ORT), an anti-fraud and abuse initiative by the Department of Health and Human Services Office of Inspector General (OIG) to identify vulnerabilities in the Medicare program and to pursue ways to reduce Medicare's exposure to fraud and abuse, identified several areas of weakness in the hospice benefit, primarily in the area of hospice eligibility. Specifically, it uncovered instances of insufficient hospice documentation and inappropriately reported diagnoses.[4] In 1995, in response to ORT's initial report, CMS issued program memoranda requiring submission of clinical information and other documentation that supports the medical prognosis. The Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 amended section 1814(a) of the Social Security Act (The Act) clarifying that certification is based on the physician or medical director's clinical judgment. Regardless, subsequent ORT reports and CMS Regional Offices and Regional Home Health Intermediary (now called Medicare Administrative Contractors) reviews continued to raise concerns regarding inappropriate certifications, specifically, certifications made for patients who are chronically ill, but who are without complications or other circumstances that indicate a life expectancy of 6 months or less.[12]

In response to those concerns, the ''Medicare Program; Hospice Care Amendments'' proposed rule (67 FR 70363, November 22, 2002), which proposed the implementation of revisions required by the Balanced Budget Act of 1997, the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999, and the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 to the existing regulations at the time governing coverage and payment for hospice care under the Medicare program, proposed revisions to § 418.22, *Certification of Terminal Illness,* requiring that specific clinical findings and other documentation supporting the medical prognosis accompany the written certification and be filed in the hospice medical record. Additionally, the 2002 rule proposed adding § 418.25 *Admission to Hospice Care,* which established general guidance on hospice admission procedures. These changes acknowledged that ''the amendment regarding the physician's clinical judgment does not negate the fact that there must be a basis for certification'' and that ''a mere signed certification, absent a medically sound basis that supports the clinical judgment, is not sufficient for application of the hospice benefit under Medicare.'' Ultimately, the final rule, ''Medicare Program; Hospice Care Amendments'' (70 FR 70532, November 22, 2005) codified the requirements and the expectations about the clinical information needed to

[10] *https://www.cms.gov/medicare-coverage-database/details/lcd-details.aspx.*

[11] Michelle T. Weckmann, MD, MS, University of Iowa Hospitals and Clinics, Iowa City, Iowa *The Role of the Family Physician in the Referral and Management of Hospice Patients.* Am Fam Physician, 2008 Mar 15;77(6):807–812.

[12] Department of Health and Human Services: Office of the Inspector General. *Operation Restore Trust Activities* by June Gibbs Brown, IG. November 1995.

support the certification of a medical prognosis of 6 months or less at § 418.22 (70 FR 70538). The final rule also set out the specific admission requirements indicating that the hospice medical director along with the patient's attending physician, if any, is responsible for admitting the patient, and identifies what information he or she must consider when certifying a patient as terminally ill (§ 418.25).

Additionally, the Medicare Payment Advisory Commission's (MedPAC) March 2009 report entitled ''Report to the Congress: Medicare's Payment Policy'' noted specific concerns regarding trends towards an increasing proportion of hospice patients with stays exceeding 180 days.[13] An analysis of this trend by a hospice expert panel illuminated limited medical director engagement in the certification or recertification process as a possible cause of this utilization pattern, reviving concerns that patients were again being inappropriately certified as terminally ill and were not actually eligible to elect the benefit. The panel determined that ''physicians responsible for certifying and recertifying a patient's eligibility for hospice may inappropriately delegate much of this responsibility to other parties.'' In response to these concerns, we finalized a policy requiring that certifications and recertifications include a brief narrative describing the clinical basis for the patient's prognosis. The FY 2010 Hospice Wage Index final rule (74 FR 39398) codified this narrative requirement for the certification of terminal illness at § 418.22(b)(3), in order to increase accountability and add oversight to the physician certification/recertification process

In the ''Medicare Program; Hospice Wage Index and Payment Rate Update FY 2015'' final rule (79 FR 50470), we again provided guidance on determining beneficiaries' eligibility for hospice, reiterating that the hospice ''is required to make certain that the physician's clinical judgment can be supported by clinical information and other documentation that provide a basis for the certification of a life expectancy of 6 months or less if the illness runs its normal course.'' This discussion reinforced the importance of ensuring that hospices are thorough in their eligibility determinations so that hospice beneficiaries are able to access all of their Medicare benefits appropriately and added additional oversight to the physician certification and recertification process. The inherent challenges in prognostication make it critical for a hospice to obtain, and the certifying hospice medical director or hospice physician designee to comprehensively review, the patient's clinical information when making the determination that the patient is terminally ill, and thus eligible for the Medicare hospice benefit. By increasing physician engagement and accountability, patients can be assured they are making the most informed decision possible, without limiting their treatment choices. In the FY 2006 Hospice Wage Index final rule (70 FR 70538), we received comments stating that it is common practice for hospices to obtain clinical information from the referring physician, which is then documented in the patient's hospice medical record.

Accordingly, we are soliciting comments for possible future rulemaking, on amending the regulations at § 418.25 to specify that the referring physician's and/or the acute/post-acute care facility's medical record would serve as the basis for initial hospice eligibility determinations. Clinical information from the referring physician and/or acute/post-acute care facility supporting a terminal prognosis would be obtained by the hospice prior to election of the benefit, when determining certification and subsequent eligibility. This potential clarifying regulatory text change would be in alignment with benefit eligibility criteria that the individual must be certified as terminally ill prior to receiving hospice services, and fundamentally could not be determined by hospice documentation obtained after admission. We are also soliciting comments on amending the regulations text at § 418.25 to specify that documentation of an in-person visit from the hospice Medical Director or the hospice physician member of the interdisciplinary group could be used as documentation to support initial hospice eligibility determinations, only if needed to augment the clinical information from the referring physician/facility's medical records. Comments on current processes used by hospices to ensure comprehensive clinical review to support certification and any alternate suggestions for supporting clinical documentation sources are also encouraged.

[13] Medicare Payment Advisory Commission. *Report to the Congress: Medicare's Payment Policy.* Washington, DC, March 2009_Accessed on March 31, 2017 at: *http://www.medpac.gov/docs/default-source/reports/march-2009-report-to-congress-medicare-payment-policy.pdf?sfvrsn=0.*

D. Proposed Updates to the Hospice Quality Reporting Program (HQRP)

1. Background and Statutory Authority

Section 3004(c) of the Affordable Care Act amended section 1814(i)(5) of the Act to authorize a quality reporting program for hospices. Section 1814(i)(5)(A)(i) of the Act requires that beginning with FY 2014 and each subsequent FY, the Secretary shall reduce the market basket update by 2 percentage points for any hospice that does not comply with the quality data submission requirements for that FY. Depending on the amount of the annual update for a particular year, a reduction of 2 percentage points could result in the annual market basket update being less than 0 percent for a FY and may result in payment rates that are less than payment rates for the preceding FY. Any reduction based on failure to comply with the reporting requirements, as required by section 1814(i)(5)(B) of the Act, would apply only for the particular year involved. Any such reduction would not be cumulative or be taken into account in computing the payment amount for subsequent FYs. Section 1814(i)(5)(C) of the Act requires that each hospice submit data to the Secretary on quality measures specified by the Secretary. The data must be submitted in a form, manner, and at a time specified by the Secretary.

2. General Considerations Used for Selection of Quality Measures for the HQRP

Any measures selected by the Secretary must be endorsed by the consensus-based entity, which holds a contract regarding performance measurement, including the endorsement of quality measures, with the Secretary under section 1890(a) of the Act. This contract is currently held by the National Quality Forum (NQF). However, section 1814(i)(5)(D)(ii) of the Act provides that in the case of a specified area or medical topic determined appropriate by the Secretary for which a feasible and practical measure has not been endorsed by the consensus-based entity, the Secretary may specify measures that are not so endorsed as long as due consideration is given to measures that have been endorsed or adopted by a consensus-based organization identified by the Secretary. Our paramount concern is the successful development of a HQRP that promotes the delivery of high quality healthcare services. We seek to adopt measures for the HQRP that promote person-centered, high quality, and safe care. Our measure selection activities for the HQRP take into consideration

input from the Measure Applications Partnership (MAP), convened by the NQF, as part of the established CMS pre-rulemaking process required under section 1890A of the Act. The MAP is a public-private partnership comprised of multi-stakeholder groups convened by the NQF for the primary purpose of providing input to CMS on the selection of certain categories of quality and efficiency measures, as required by section 1890A(a)(3) of the Act. By February 1st of each year, the NQF must provide that input to CMS. Input from the MAP is located at: *http://www.qualityforum.org/Setting_Priorities/Partnership/Measure_Applications_Partnership.aspx.* We also take into account national priorities, such as those established by the HHS Strategic Plan (*http://www.hhs.gov/secretary/about/priorities/priorities.html*), the National Strategy for Quality Improvement in Healthcare, (*http://www.ahrq.gov/workingforquality/reports/annual-reports/nqs2015annlrpt.htm*) and the CMS Quality Strategy (*https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/QualityInitiativesGenInfo/CMS-Quality-Strategy.html*). To the extent practicable, we have sought to adopt measures endorsed by member organizations of the National Consensus Project (NCP) (*http://www.nationalconsensusproject.org/Default.aspx*), recommended by multi-stakeholder organizations, and developed with the input of providers, purchasers/payers, and other stakeholders.

We consider related factors that may affect measures in the HQRP. We understand that social risk factors such as income, education, race and ethnicity, employment, disability, community resources, and social support (certain factors of which are also sometimes referred to as socioeconomic status (SES) factors or socio-demographic status (SDS) factors) play a major role in health. One of our core objectives is to improve beneficiary outcomes including reducing health disparities, and we want to ensure that all beneficiaries, including those with social risk factors, receive high quality care. In addition, we seek to ensure that the quality of care furnished by providers and suppliers is assessed as fairly as possible under our programs while ensuring that beneficiaries have adequate access to excellent care.

We have been reviewing reports prepared by the Office of the Assistant Secretary for Planning and Evaluation (ASPE) [14] and the National Academies of Sciences, Engineering, and Medicine on the issue of measuring and accounting for social risk factors in CMS' value-based purchasing and quality reporting programs, and considering options on how to address the issue in these programs. On December 21, 2016, ASPE submitted a Report to Congress on a study it was required to conduct under section 2(d) of the Improving Medicare Post-Acute Care Transformation (IMPACT) Act of 2014. The study analyzed the effects of certain social risk factors of Medicare beneficiaries on quality measures and measures of resource use used in one or more of nine Medicare value-based purchasing programs.[15] The report also included considerations for strategies to account for social risk factors in these programs. In a January 10, 2017 report released by The National Academies of Sciences, Engineering, and Medicine, that body provided various potential methods for measuring and accounting for social risk factors, including stratified public reporting.[16]

In addition, the NQF has undertaken a 2-year trial period in which new measures, measures undergoing maintenance review, and measures endorsed with the condition that they enter the trial period can be assessed to determine whether risk adjustment for selected social risk factors is appropriate for these measures. This trial entails temporarily allowing inclusion of social risk factors in the risk-adjustment approach for these measures. At the conclusion of the trial, NQF will issue recommendations on the future inclusion of social risk factors in risk adjustment for quality measures.

As we continue to consider the analyses and recommendations from these reports and await the results of the NQF trial on risk adjustment for quality measures, we are continuing to work with stakeholders in this process. As we have previously communicated, we are concerned about holding providers to different standards for the outcomes of their patients with social risk factors because we do not want to mask potential disparities or minimize incentives to improve the outcomes for disadvantaged populations. Keeping this concern in mind, while we sought input on this topic previously, we continue to seek public comment on whether we should account for social risk factors in measures in the HQRP, and if so, what method or combination of methods would be most appropriate for accounting for social risk factors. Examples of methods include: Confidential reporting to providers of measure rates stratified by social risk factors, public reporting of stratified measure rates, and potential risk adjustment of a particular measure as appropriate based on data and evidence.

In addition, we are also seeking public comment on which social risk factors might be most appropriate for reporting stratified measure scores and/or potential risk adjustment of a particular measure. Examples of social risk factors include, but are not limited to, dual eligibility/low-income subsidy, race and ethnicity, and geographic area of residence. We are seeking comments on which of these factors, including current data sources where this information would be available, could be used alone or in combination, and whether other data should be collected to better capture the effects of social risk. We will take commenters' input into consideration as we continue to assess the appropriateness and feasibility of accounting for social risk factors in the HQRP. We note that any such changes would be proposed through future notice and comment rulemaking.

We look forward to working with stakeholders as we consider the issue of accounting for social risk factors and reducing health disparities in our programs. Of note, implementing any of the above methods would be taken into consideration in the context of how this and our other programs operate (for example, data submission methods, availability of data, statistical considerations relating to reliability of data calculations, among others), so we also welcome comment on operational considerations. We are committed to ensuring that its beneficiaries have access to and receive excellent care, and that the quality of care furnished by providers and suppliers is assessed fairly in our programs.

3. Policy for Retention of HQRP Measures Adopted for Previous Payment Determinations

For the purpose of streamlining the rulemaking process, we finalized our policy in the FY 2016 Hospice Wage Index final rule (80 FR 47187) that when we adopt measures for the HQRP beginning with a payment determination year, these measures

[14] *https://aspe.hhs.gov/pdf-report/report-congress-social-risk-factors-and-performance-under-medicares-value-based-purchasing-programs.*

[15] *https://aspe.hhs.gov/pdf-report/report-congress-social-risk-factors-and-performance-under-medicares-value-based-purchasing-programs.*

[16] National Academies of Sciences, Engineering, and Medicine. 2017. Accounting for social risk factors in Medicare payment. Washington, DC: The National Academies Press.

would automatically be adopted for all subsequent years' payment determinations, unless we proposed to remove, suspend, or replace the measures. Quality measures would be considered for removal by us for reasons including, but not limited to:

- Measure performance among hospices was so high and unvarying that meaningful distinction in improvements in performance could no longer be made;
- Performance or improvement on a measure did not result in better patient outcomes;
- A measure did not align with current clinical guidelines or practice;
- A more broadly applicable measure (across settings, populations, or conditions) for the particular topic was available;
- A measure that was more proximal in time to desired patient outcomes for the particular topic was available;
- A measure that was more strongly associated with desired patient outcomes for the particular topic was available; or
- Collection or public reporting of a measure led to negative unintended consequences.

For any such removal, the public would be given an opportunity to comment through the annual rulemaking process. However, if there was reason to believe continued inclusion of a measure in the HQRP would encourage delivery of care that raised potential safety concerns, we would take immediate action to remove the measure from the HQRP and not wait for the annual rulemaking cycle. The measures would be promptly removed and we would immediately notify hospices and the public of such a decision through the CMS HQRP Web site, listserv messages via the Post-Acute Care QRP listserv,[17] MLN Connects® National Provider Calls & Events, MLN Connects® Provider eNews. Following immediate removal of the measures, we would also notify the public of any such removal in the next annual rulemaking cycle. CMS expects immediate removal of a measure due to safety concerns to be an unlikely event, given the rigorous testing and analysis all measures undergo prior to adoption in the HQRP.

4. Policy for Adopting Changes to Previously Adopted Measures

To further streamline the rulemaking process, we finalized in the FY 2017 Hospice Wage Index final rule that if measures in the HQRP undergo non-substantive changes in specifications as part of their NQF re-endorsement process, we would subsequently utilize the measure with their new endorsed status in the HQRP without going through new notice-and-comment rulemaking (81 FR 52159). As mentioned previously, quality measures selected for the HQRP must be endorsed by the NQF unless they meet the statutory criteria for exception under section 1814(i)(5)(D)(ii) of the Act. The NQF is a voluntary consensus standard-setting organization with a diverse representation of consumer, purchaser, provider, academic, clinical, and other healthcare stakeholder organizations. The NQF was established to standardize healthcare quality measurement and reporting through its consensus measure development process (*http://www.qualityforum.org/About_NQF/Mission_and_Vision.aspx*). The NQF undertakes review of: (a) New quality measures and national consensus standards for measuring and publicly reporting on performance, (b) regular maintenance processes for endorsed quality measures, (c) measures with time-limited endorsement for consideration of full endorsement, and (d) ad hoc review of endorsed quality measures, practices, consensus standards, or events with adequate justification to substantiate the review. Through NQF's or the measure steward's measure maintenance process, measures are sometimes updated to incorporate changes that we believe do not substantively change the intent of the measure. Examples of such changes may include updated diagnosis or procedure codes or changes to exclusions to the patient population or definitions. While we address such changes on a case-by case basis, we generally believe these types of maintenance changes are distinct from substantive changes to measures that result in what are considered new or different measures. Additionally, since the NQF endorsement and measure maintenance process is one that ensures transparency, public input, and discussion among representatives across the healthcare enterprise,[18] we believe that the NQF measure endorsement and maintenance process itself is transparent, scientifically rigorous, and provides opportunity for public input. Thus, we finalized our proposal to codify at § 418.312 that if the NQF makes only non-substantive changes to specifications for HQRP measures in the NQF's re-endorsement process, we would continue to utilize the measure in its new endorsed status (81 FR 52159 through 52160). If NQF-endorsed specifications change and we do not adopt those changes, then we would propose the measure as a modification. A modification of a NQF-endorsed quality measure is utilized in instances when we have identified a need to use a NQF-endorsed measure in a QRP but need to use it with one or more modifications to the quality measure's specifications. These modifications pertain to, but are not limited to, one or more of the following aspects of a NQF-endorsed quality measure: (a) Numerator, (b) denominator, (c) setting, (d) look-back period, (e) calculation period, (f) risk adjustment, and (g) revisions to data elements used to collect the data required for the measure, etc. CMS may adopt a quality measure for the HQRP under section 1814(i)(5)(D)(ii) of the Act, which states, ''[i]n the case of a specified area or medical topic determined appropriate by the Secretary for which a feasible and practical measure has not been endorsed by [the NQF], the Secretary may specify a measure that is not so endorsed as long as due consideration is given to measures that have been endorsed or adopted by a consensus organization identified by the Secretary.'' Reasons for not adopting changes in measure specifications to a measure may include any of the aforementioned criteria in the prior section, including that the new specification does not align with clinical guidelines or practice or that the new specification leads to negative unintended consequences.

Finally, we will continue to use rulemaking to adopt substantive updates made by the NQF to the endorsed measures we have adopted for the HQRP. We continue to make these determinations about what constitutes a substantive versus non-substantive change on a measure-by-measure basis. A change would be deemed substantive if the intent of the measure changes, the facility/setting changes, the data sources changes, the level of analysis changes, and/or the measure is removed. We will continue to provide updates about changes to measure specifications as a result of NQF endorsement or maintenance processes through the CMS HQRP Web site, listserv messages on the Post-Acute Care QRP listserv, MLN Connects® National Provider Calls & Events, MLN Connects® Provider eNews and announcements on Open Door Forums and Special Open Door Forums.

[17] CMS, Post-Acute Care QRP listerv, available at: *https://public-dc2.govdelivery.com/accounts/USCMS/subscriber/new?topic_id=USCMS_12265.*

[18] ''*NQF: How Endorsement Happens—National Quality Forum.*'' *2010. 26 Jan. 2016 http://www.qualityforum.org/Measuring_Performance/ABCs/How_Endorsement_Happens.aspx.*

5. Previously Adopted Quality Measures for FY 2018 Payment Determination and Future Years

In the FY 2014 Hospice Wage Index final rule (78 FR 48257), and in compliance with section 1814(i)(5)(C) of the Act, we finalized the specific collection of data items that support the following 7 NQF-endorsed measures for hospice:

- NQF #1617 Patients Treated with an Opioid who are Given a Bowel Regimen,
- NQF #1634 Pain Screening,
- NQF #1637 Pain Assessment,
- NQF #1638 Dyspnea Treatment,
- NQF #1639 Dyspnea Screening,
- NQF #1641 Treatment Preferences,
- NQF #1647 Beliefs/Values Addressed (if desired by the patient).[19]

We finalized the following two additional measures in the FY 2017 Hospice Wage Index final rule effective April 1, 2017. Data collected will, if not reported, affect payments for FY 2019 and subsequent years. (81 FR 52163 through 52173):

- Hospice Visits when Death is Imminent
- Hospice and Palliative Care Composite Process Measure—Comprehensive Assessment at Admission

We finalized the HIS effective July 1, 2014 (78 FR 48258). The HIS is the data collection mechanism for all of the aforementioned measures. To meet the quality reporting requirements for hospices for the FY 2016 payment determination and each subsequent year, we require regular and ongoing electronic submission of the HIS data for each patient admission to hospice after July 1, 2014, regardless of payer or patient age (78 FR 48234 through 48258). For the two measures finalized in the FY 2017 Hospice Wage Index final rule, we require regular and ongoing electronic submission for each patient admission to hospice after April 1, 2017. We finalized a requirement in the FY 2014 Hospice Wage Index final rule (78 FR 48258) that hospice providers collect data on all patients to ensure that all patients regardless of payer or patient age are receiving the same care and that provider metrics measure performance across the spectrum of patients. Table 16 below provides a summary of measures previously finalized affecting the FY 2019 APU, data collection mechanism, and data submission deadline.

Hospices are required to complete and submit a HIS-Admission and a HIS-Discharge record for each patient admission. Hospices failing to report quality data via the HIS for patient admissions occurring in 2017 will have their market basket update reduced by 2 percentage points in FY 2019 (beginning in October 1, 2018). In the FY 2015 Hospice Wage Index final rule (79 FR 50485 through 50487), we finalized the proposal to codify the HIS submission requirement at § 418.312. The System of Record (SOR) Notice titled ''Hospice Item Set (HIS) System,'' SOR number 09–70–0548, was published in the **Federal Register** on April 8, 2014 (79 FR 19341).

The 7 NQF endorsed HIS measures adopted in FY 2014 Hospice Wage Index final rule successfully underwent NQF Endorsement Maintenance in 2016.[20] We recognize that the NQF endorsement process is an important part of measure development and plan to submit the two measures finalized in the FY 2017 Hospice Wage Index final rule for NQF endorsement once sufficient measure data are available and we conduct the analyses necessary to support NQF submission for endorsement (for example, reliability and validity analyses). Typically, we need at least 4 quarters worth of data to conduct the necessary analyses and establish measure reliability and validity. Because the Hospice and Palliative Care Composite Process Measure—Comprehensive Assessment at Admission did not require any new data collection and can be calculated using existing data, CMS's measure development contractor, RTI International, has already conducted the analyses necessary to support submission of the measure for NQF endorsement. We have already submitted the Hospice and Palliative Care Composite Process Measure for consideration for endorsement at NQF (NQF #3235); the measure is currently under review. Data for the Hospice Visits when Death is Imminent measure pair will be collected using new items added to the HIS V2.00.0, effective April 1, 2017. Once data collection for the measure pair begins, we will need at least 4 quarters of reliable data to conduct the necessary analyses to support submission to NQF. We will also need to assess the quality of data submitted in the first quarter of item implementation to determine whether they can be used in the analyses. Pending analysis, we will submit the Hospice Visits when Death is Imminent measure pair to NQF for endorsement review in accordance with NQF project timelines and call for measures. In the FY 2015 Hospice Wage Index final rule (79 FR 50491 through 50496), we also finalized the Consumer Assessment of Healthcare Providers and Systems (CAHPS®) Hospice Survey to support quality measures based on patient and family experience of care. We refer readers to section III.D.11 of this notice of proposed rulemaking for details regarding the CAHPS® Hospice Survey, including public reporting of selected survey measures.

TABLE 16—PREVIOUSLY FINALIZED QUALITY MEASURES AFFECTING THE FY 2019 PAYMENT DETERMINATION AND SUBSEQUENT YEARS

NQF No.	Measure name	Payment determination (APU) year for which the quality measure was first adopted	Data collection mechanism	Data submission deadline
1641	Treatment Preferences	FY 2016	Hospice Item Set	Rolling—within 30 days of patient admission or discharge (event date).
1647	Beliefs/Values Addressed (if desired by the patient).	FY 2016.		
1634	Pain Screening	FY 2016.		
1637	Pain Assessment	FY 2016.		

[19] Previously finalized as a ''modified measure'' in the FY17 and prior rules (81 FR 52160). Following NQF maintenance endorsement, NQF #1647 measure specifications where updated and now aligns with the measure data lookback period for this program.

[20] National Quality Forum, *NQF Palliative and End-of-Life Care 2015–2016 Report,* available at: *http://www.qualityforum.org/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=84242.*

TABLE 16—PREVIOUSLY FINALIZED QUALITY MEASURES AFFECTING THE FY 2019 PAYMENT DETERMINATION AND SUBSEQUENT YEARS—Continued

NQF No.	Measure name	Payment determination (APU) year for which the quality measure was first adopted	Data collection mechanism	Data submission deadline
1639	Dyspnea Screening	FY 2016.		
1638	Dyspnea Treatment	FY 2016.		
1617	Patients Treated with an Opioid Who Are Given a Bowel Regimen.	FY 2016.		
N/A	Hospice and Palliative Care Composite Process Measure—Comprehensive Assessment at Admission.	FY 2019	.....	Rolling—within 30 days of patient admission or discharge (event date) for patient admissions to hospice on 04/01/2017 and onward.
N/A	Hospice Visits When Death is Imminent Measure Pair.	FY 2019.		

6. Proposed Removal of Previously Adopted Measures

We are not proposing to remove any of the current HQRP measures at this time. Any future proposals regarding removal, suspension, or replacement of measures will be proposed in this section of future rules. As stated in section III.D.3, a quality measure that is adopted and implemented in the HQRP will be retained for all subsequent years, unless the measure is proposed for removal, suspension, or replacement by CMS. Policies and criteria for removing a measure include those identified in section III.D.3 of this proposed rule.

7. Measure Concepts Under Consideration for Future Years

Although we are not proposing any HIS-based measures in this proposed rule, we have measure concepts under consideration for future years.

Our paramount concern is to develop quality measures that promote care that is person-centered, high quality, and safe. We continue to work with our measure development contractor, RTI International, to identify measure concepts for future implementation in the HQRP. In identifying priority areas for future measure enhancement and development, we take into consideration input from numerous stakeholders, including the MAP, the MedPAC, Technical Expert Panels (TEP), and national priorities, such as those established by the HHS Strategic Plan, the National Strategy for Quality Improvement in Healthcare, and the CMS Quality Strategy. In addition, we take into consideration vital feedback and input from research published by our payment reform contractor. The current HQRP measure set is also an important consideration for future measure development areas; future measure development areas should complement the current HQRP measure set, including current HIS measures and CAHPS® Hospice Survey measures, without creating unnecessary burden or redundant reporting. Based on input from stakeholders, we identified two high priority areas that will be addressed by claims-based measure development. Developing quality measures using claims does not require new data collection, thus minimizing provider burden and expediting implementation.

• Priority Area 1: Potentially Avoidable Hospice Care Transitions

The concept of a claims-based measure focusing on transitions of care was first introduced in the FY 2016 Hospice Wage Index final rule (80 FR 47188 through 47189). Comments received during this rule were overall supportive of our efforts to develop more robust quality measures that capture hospice performance and show links to patient and family outcomes. We refer readers to the FY 2016 Hospice Wage Index final rule (80 FR 47188 through 47189) for additional detail: *https://www.gpo.gov/fdsys/pkg/FR-2015-08-06/pdf/2015-19033.pdf.*

Potentially avoidable hospice care transitions at end of life are burdensome to patients, families, and the health care system at large, because they are associated with adverse health outcomes, lower patient and family satisfaction, higher health care costs, and fragmentation of care delivery.[21] [22] [23] [24] [25] By encouraging hospice providers to assess and manage patients' risk of care transitions, this measure concept has the potential to improve quality care at the end of life by reducing potentially avoidable hospice care transitions.

• Priority Area 2: Access to Levels of Hospice Care

The Medicare Hospice Benefit covers four levels of care to meet patients' and families' clinical needs: Routine home care (RHC), continuous home care (CHC), general inpatient care (GIP), and inpatient respite care. The goal of this measure concept is to assess the rates at which hospices provide different levels of hospice care. The measure has the potential to improve access to various levels of care for patients and caregivers. Appropriate use of CHC and GIP increases the likelihood of a hospice patient dying in his or her location of choice, decreases health resource utilization resulting in potential cost savings, and increases patient and caregiver satisfaction.[26] [27] Measuring use of levels of care will incentivize hospice providers to continuously assess patient

[21] Aldridge MDP, MBA; Epstein, Andrew J. Ph.D.; Brody, Abraham A. RN, Ph.D.; Lee, Eric J. MPH; Cherlin, Emily Ph.D., MSW; Bradley, Elizabeth H. Ph.D. The Impact of Reported Hospice Preferred Practices on Hospital Utilization at the End of Life Medical Care. 2016;54(7):657–663.

[22] Wang S-Y, Aldridge MD, Gross CP, et al. Transitions Between Healthcare Settings of Hospice Enrollees at the End of Life. Journal of the American Geriatrics Society. 2016;64(2):314–322.

[23] Carlson MDA, Herrin J, Du Q, et al. Impact of Hospice Disenrollment on Health Care Use and Medicare Expenditures for Patients With Cancer. Journal of Clinical Oncology. 2010;28(28):4371–4375.

[24] Teno JM, Bowman J, Plotzke M, et al. Characteristics of Hospice Programs With Problematic Live Discharges. Journal of Pain and Symptom Management. 2015;50(4):548–552.

[25] Prsic E, Plotzke M, Christian TJ, Gozalo P, Teno JM. A National Study of Live Hospice Discharges between 2000 and 2012. Journal of Palliative Medicine. 2016;19(9):987–990.

[26] Barclay, J., et al., Association of hospice patients' income and care level with place of death. JAMA Internal Medicine, 2013. 173(6): p. 450–456.

[27] Casarett, D., et al., Does Continuous Hospice Care Help Patients Remain at Home? Journal of Pain and Symptom Management, 2015. 50(3): p. 297–304.

and caregiver needs and provide the appropriate level of care to meet these needs.

These two measure concepts are under development, and details regarding measure definitions, specifications and timeline for implementation will be communicated in future rulemaking. We are soliciting comments regarding high priority concept areas for future measure development.

8. Form, Manner, and Timing of Quality Data Submission

a. Background

Section 1814(i)(5)(C) of the Act requires that each hospice submit data to the Secretary on quality measures specified by the Secretary. Such data must be submitted in a form and manner, and at a time specified by the Secretary. Section 1814(i)(5)(A)(i) of the Act requires that beginning with the FY 2014 and for each subsequent FY, the Secretary shall reduce the market basket update by 2 percentage points for any hospice that does not comply with the quality data submission requirements for that FY.

b. Policy for New Facilities To Begin Submitting Quality Data

In the FY 2015 Hospice Wage Index final rule (79 FR 50488), we finalized a policy stating that any hospice that receives its CMS Certification Number (CCN) (also known as the Medicare Provider Number) notification letter dated on or after November 1 of the preceding year involved is excluded from any payment penalty for quality reporting purposes for the following FY. This requirement was codified at § 418.312.

In the FY 2016 Hospice Wage Index final rule (80 FR 47189), we further clarified and finalized our policy for the timing of new providers to begin reporting data to CMS. The clarified policy finalized in the FY 2016 Hospice Wage Index final rule (80 FR 47189) distinguished between when new hospice providers are required to begin submitting HIS data and when providers will be subject to the potential 2 percentage point annual payment update (APU) reduction for failure to comply with HQRP requirements. In summary, the policy finalized in the FY 2016 Hospice Wage Index final rule (80 FR 47189 through 47190) clarified that providers must begin submitting HIS data on the date listed in the letterhead of the CCN Notification letter received from CMS but will be subject to the APU reduction based on whether the CCN Notification letter was dated before or after November 1 of the reporting year involved. Thus, beginning with the FY 2018 payment determination and for each subsequent payment determination, we finalized our policy that a new hospice be responsible for HQRP quality data submission beginning on the date of the CCN notification letter; we retained our prior policy that hospices not be subject to the APU reduction if the CCN notification letter was dated after November 1 of the year involved. For example, if a provider receives their CCN notification letter and the date in the letterhead is November 5, 2017, that provider will begin submitting HIS data for patient admissions occurring after November 5, 2017. However, since the CCN notification letter was dated after November 1st, they would not be evaluated for, or subject to any payment penalties for, the relevant FY APU update (which in this instance is the FY 2019 APU, which is associated with patient admissions occurring January 1, 2017 through December 31, 2017).

This policy allows us to receive HIS data on all patient admissions on or after the date a hospice receives their CCN notification letter, while at the same time allowing hospices flexibility and time to establish the necessary accounts for data submission before they are subject to the potential APU reduction for a given reporting year. Currently, new hospices may experience a lag between Medicare certification and receipt of their actual CCN Number. Since hospices cannot submit data to the QIES ASAP system without a valid CCN Number, we finalized that new hospices begin collecting HIS quality data beginning on the date noted on the CCN notification letter. We believe this policy provides sufficient time for new hospices to establish appropriate collection and reporting mechanisms to submit the required quality data to CMS. Requiring quality data reporting beginning on the date listed in the letterhead of the CCN notification letter aligns our policy requirements for new providers with the functionality of the HIS data submission system (QIES ASAP).

c. Previously Finalized Data Submission Mechanisms, Timelines, and Deadlines

In the FY 2015 Hospice Wage Index final rule (79 FR 50486), we finalized our policy requiring that hospices complete and submit HIS records for all patient admissions to hospice after July 1, 2014. For each HQRP program year, we require that hospices submit data on each of the adopted measures in accordance with the reporting requirements specified in sections III.C.9.b through III.C.9.c of the FY 2015 rule for the designated reporting period. This requirement applies to previously finalized and adopted measures, as well as new measures proposed through the rulemaking process. Electronic submission is required for all HIS records. Although electronic submission of HIS records is required, hospices do not need to have an electronic medical record to complete or submit HIS data. In the FY 2014 Hospice Wage Index final rule (78 FR 48258), we finalized a provision requiring that providers use either the Hospice Abstraction Reporting Tool (HART) (which is free to download and use) or vendor-designed software to complete HIS records. HART provides an alternative option for hospice providers to collect and maintain facility, patient, and HIS Record information for subsequent submission to the QIES ASAP system. Once HIS records are complete, electronic HIS files must be submitted to CMS via the QIES ASAP system. Electronic data submission via the QIES ASAP system is required for all HIS submissions; there are no other data submission methods available. Hospices have 30 days from a patient admission or discharge to submit the appropriate HIS record for that patient through the QIES ASAP system. We will continue to make HIS completion and submission software available to hospices at no cost. We provided details on data collection and submission timing under the downloads section of the HIS Web page on the *CMS.gov* Web site at *http://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Hospice-Quality-Reporting/Hospice-Item-Set-HIS.html.*

The QIES ASAP system provides reports upon successful submission and processing of the HIS records. The final validation report may serve as evidence of submission. This is the same data submission system used by nursing homes, inpatient rehabilitation facilities, home health agencies, and long-term care hospitals for the submission of Minimum Data Set Version 3.0 (MDS 3.0), Inpatient Rehabilitation Facility-patient assessment instrument (IRF–PAI), Outcome Assessment Information Set (OASIS), and Long-Term Care Hospital Continuity Assessment Record & Evaluation Data Set (LTCH CARE), respectively. We have provided hospices with information and details about use of the HIS through postings on the HQRP Web site, Open Door Forums, announcements in the CMS MLN Connects® Provider e-News (E-News), and provider training.

Hospices are evaluated for purposes of the quality reporting program based on whether or not they submit data, not on their substantive performance level for the required quality measures. In order for us to appropriately evaluate the quality reporting data received by hospice providers, it is essential HIS data be received in a timely manner.

The submission date is the date on which the completed record is submitted and accepted by the QIES ASAP system. In the FY 2016 Hospice Wage Index final rule (80 FR 47191), we finalized our policy that beginning with the FY 2018 payment determination, hospices must submit all HIS records within 30 days of the event date, which is the patient's admission date for HIS-Admission records or discharge date for HIS-Discharge records.

For HIS-Admission records, the submission date must be no later than the admission date plus 30 calendar days. The submission date can be equal to the admission date, or no greater than 30 days later. The QIES ASAP system will issue a warning on the Final Validation Report if the submission date is more than 30 days after the patient's admission date.

For HIS-Discharge records, the submission date must be no later than the discharge date plus 30 calendar days. The submission date can be equal to the discharge date, or no greater than 30 days later. The QIES ASAP system will issue a warning on the Final Validation Report if the submission date is more than 30 days after the patient's discharge date.

The QIES ASAP system validation edits are designed to monitor the timeliness of submission and ensure that providers' submitted records conform to the HIS data submission specifications. Providers are notified when timing criteria have not been met by warnings that appear on their Final Validation Reports. A standardized data collection approach that coincides with timely submission of data is essential to establish a robust quality reporting program and ensure the scientific reliability of the data received. In the FY 2016 Hospice Wage Index final rule (80 FR 47191), we also clarified the difference between the completion deadlines and the submission deadlines. Current sub-regulatory guidance produced by CMS (for example, HIS Manual, HIS trainings) states that the completion deadlines for HIS records are 14 days after the Event Date for HIS-Admission records and 7 days after the Event Date for HIS-Discharge records. Completion deadlines continue to reflect CMS guidance only; these guidelines are not statutorily specified and are not designated through regulation. These guidelines are intended to offer clear direction to hospice agencies in regards to the timely completion of HIS-Admission and HIS-Discharge records. The completion deadlines define only the latest possible date on which a hospice should complete each HIS record. This guidance is meant to better align HIS completion processes with clinical workflow processes; however, hospices may develop alternative internal policies to complete HIS records. Although it is at the discretion of the hospice to develop internal policies for completing HIS records, we will continue to recommend that providers complete and attempt to submit HIS records early, prior to the previously finalized submission deadline of 30 days, beginning in FY 2018. Completing and attempting to submit records early allows providers ample time to address any technical issues encountered in the QIES ASAP submission process, such as correcting fatal error messages. Completing and attempting to submit records early will ensure that providers are able to comply with the 30 day submission deadline. HQRP guidance documents, including the CMS HQRP Web site, HIS Manual, HIS trainings, Frequently Asked Questions, and Fact Sheets, continue to offer the most up-to-date CMS guidance to assist providers in the successful completion and submission of HIS records. Availability of updated guidance will be communicated to providers through the CMS HQRP Web site, listserv messages via the Post-Acute Care QRP listserv, MLN Connects® National Provider Calls & Events, MLN Connects® Provider eNews and announcements on Open Door Forums and Special Open Door Forums.

d. New Data Collection and Submission Mechanisms Under Consideration: Hospice Evaluation & Assessment Reporting Tool (HEART)

We have made great progress in implementing the objectives set forth in the quality reporting and data collection activities required by sections 3004 of the Affordable Care Act. To date, we have established the HQRP, which includes clinical quality measures from the HIS and patient experience of care measures from the CAHPS® Hospice Survey. We have also finalized payment reform measures, including changes to the RHC payment rate and the implementation of a Service Intensity Add-On (SIA) payment, effective January 1st, 2016.

As discussed in the FY 2017 final rule (81 FR 52177), to facilitate continued progress towards the requirements set forth in section 3004 of the Affordable Care Act, we are in the early stages of the development of a new data collection mechanism for use by hospices. This new data collection mechanism would be a hospice patient assessment tool, which would serve two primary objectives concordant with the Affordable Care Act legislation: (1) To provide the quality data necessary for HQRP requirements and the current function of the HIS; and (2) provide additional clinical data that could inform future payment refinements. In the FY 2017 final rule (81 FR 52176 through 52179), we solicited input from the public on the development of a hospice patient assessment tool that would collect quality, clinical, and other data with the ability to be used to inform future payment refinement efforts. Overall, feedback from the public was supportive of the move towards a standardized patient assessment instrument, and commenters offered some guiding principles for CMS to keep in mind in the development of a patient assessment tool, given the unique nature of hospice care. For a detailed discussion of the public comments and responses, as well as CMS's guiding principles and motivation behind the development of a hospice patient assessment tool, we refer readers to the FY 2017 final rule (81 FR 52177 through 52179).

As noted in the FY 2017 final rule, we envision the hospice patient assessment tool itself as an expanded HIS. The hospice patient assessment tool would include current HIS items, as well as additional clinical items that could also be used for payment refinement purposes or to develop new quality measures. The hospice patient assessment tool would not replace existing requirements set forth in the Medicare Hospice CoPs (such as the initial and comprehensive assessment), but would be designed to complement data that are collected as part of high-quality clinical care. The new data collection effort would replace the current HIS, but would not replace other HQRP data collection efforts (that is, the CAHPS® Hospice Survey), nor would it replace regular submission of claims data. We envision that patient assessment data would be collected upon a patient's admission to and discharge from any Medicare-certified hospice provider; additional interim data collection efforts are also possible.

We are not proposing a hospice patient assessment tool at this time; we are still in the early stages of development of an assessment tool to determine the appropriate content and

feasibility of such a tool. As such, we have made progress over the past year in the development of a hospice patient assessment tool, preliminarily called the Hospice Evaluation & Assessment Reporting Tool (HEART). CMS's measure development contractor, RTI International, has begun preliminary HEART development activities, including: Conducting environmental scans and engaging clinical experts to determine which domains of care are important to capture in a hospice patient assessment; posting a national provider call and forming a Clinical Committee comprised of hospice organizations from across the U.S. to participate in the early development of an assessment; and collaborating within CMS to assess various stakeholder needs and encourage collaboration within CMS and across other HHS agencies. As we move forward with the development of the HEART patient assessment tool, we will continue to keep the public informed of our progress and solicit input as we establish and finalize domains of care to include in the assessment, and as we move towards specific item wording and development. Once we move past the preliminary phases of development and conceptualization, we will communicate a timeline for the HEART development, testing, and implementation in future rulemaking cycles.

As mentioned in the FY 2017 final rule, it is important for CMS to develop a hospice patient assessment tool that is scientifically rigorous and clinically appropriate for the hospice population, thus we believe that continued and transparent involvement of stakeholders is critical. We will continue to receive stakeholder input from MedPAC and ongoing input from the provider community, Medicare beneficiaries, and technical experts. Additionally, it is important for CMS to minimize data collection burden on providers; in the development of HEART. We will ensure that hospice patient assessment data items are not duplicative or overly burdensome to providers, patients, caregivers, or their families. We will also work with the public and other stakeholders to ensure that HEART takes into account the unique aspects of hospice care delivery including symptom burden and psychosocial needs, patient and family preferences, care of imminently dying patients, and the complexity of providing hospice care in multiple settings and at multiple intensity levels.

9. Previously Adopted APU Determination and Compliance Criteria for the HQRP

a. Background

The HQRP is currently designed as a ''pay-for-reporting'' system, meaning that it is the act of submitting data that determines compliance with HQRP requirements. Performance level is not a consideration when determining market basket updates/APU. Reporting compliance is determined by successfully fulfilling both the Hospice CAHPS® Survey requirements and the HIS data submission requirements.

b. Previously Finalized HIS Data Submission Timelines and Compliance Thresholds for FY 2018 Payment Determination and Subsequent Years

To accurately analyze quality reporting data received by hospice providers, it is imperative we receive ongoing and timely submission of all HIS-Admission and HIS-Discharge records. In the FY 2016 Hospice Wage Index final rule (80 FR 47192), we finalized the timeliness criteria for submission of HIS-Admission and HIS-Discharge records. The finalized timeliness criteria were in response to input from our stakeholders seeking additional specificity related to HQRP compliance affecting FY payment determinations and, due to the importance of ensuring the integrity of quality data submitted.

As stated in that rule, beginning with the FY 2018 payment determination and subsequent FY payment determinations, all HIS records would have to be submitted within 30 days of the event date, which is the patient's admission date or discharge date.

In conjunction with the timeliness criteria for submission of HIS-Admission and HIS-Discharge records, in the FY 2016 Hospice Wage Index final rule (80 FR 47192) we also finalized a policy to establish an incremental threshold for compliance over a 3-year period. To be compliant for the FY 2018 APU determination, hospices must submit no less than 70 percent of their total number of HIS-Admission and HIS-Discharge records by no later than 30 days from the event date. The timeliness threshold is set at 80 percent for the FY 2019 APU determination and at 90 percent for the FY 2020 APU determination and subsequent years. The threshold corresponds with the overall amount of HIS records received from each provider that fall within the established 30 day submission timeframes. Our ultimate goal is to require all hospices to achieve a compliance rate of 90 percent or more.

To summarize, in the FY 2016 Hospice Wage Index final rule (80 FR 47193), we finalized our policy to implement the timeliness threshold requirement beginning with all HIS-Admission and HIS-Discharge records that occur after January 1, 2016, in accordance with the following schedule:

- Beginning January 1, 2016 to December 31, 2016, hospices must submit at least 70 percent of all required HIS records within the 30 day submission timeframe for the year or be subject to a 2 percentage point reduction to their market basket update for FY 2018.
- Beginning January 1, 2017 to December 31, 2017, hospices must submit at least 80 percent of all required HIS records within the 30 day submission timeframe for the year or be subject to a 2 percentage point reduction to their market basket update for FY 2019.
- Beginning January 1, 2018 to December 31, 2018, hospices must submit at least 90 percent of all required HIS records within the 30 day submission timeframe for the year or be subject to a 2 percentage point reduction to their market basket update for FY 2020.

In July of 2016, we released the Hospice Timeliness Compliance Threshold Report in the Certification and Survey Provider Enhanced Reports (CASPER) system. This report allows providers with a QIES ASAP User ID to check their preliminary compliance with the 70/80/90 timeliness compliance threshold described above. For more information on the Hospice Timeliness Compliance Threshold Report, we refer readers to the Timeliness Compliance Threshold Fact Sheet, available on the HIS portion of the CMS HQRP Web site: *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Hospice-Quality-Reporting/Hospice-Item-Set-HIS.html* and Chapter 3 of the CASPER User's Manual, available on the QTSO Web site: *https://www.qtso.com/hospicetrain.html.*

In the FY 2016 Hospice Wage Index final rule (80 FR 47192 through 47193), we provided clarification regarding the methodology used in calculating the 70 percent/80 percent/90 percent compliance thresholds. In general, HIS records submitted for patient admissions and discharges occurring during the reporting period (January 1st to December 31st of the reporting year involved) will be included in the denominator for the compliance threshold calculation. The numerator of the compliance threshold calculation would include any records from the

denominator that were submitted within the 30 day submission deadline. In the FY 2016 Hospice Wage Index final rule (80 FR 47192), we also stated that we would make allowances in the calculation methodology for two circumstances. First, the calculation methodology will be adjusted following the applicable reporting period for records for which a hospice is granted an extension or exemption by CMS. Second, adjustments will be made for instances of modification/inactivation requests (Item A0050. Type of Record = 2 or 3). Additional helpful resources regarding the timeliness compliance threshold for HIS submissions can be found under the downloads section of the HIS Web page at *CMS.gov* at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Hospice-Quality-Reporting/Hospice-Item-Set-HIS.html.* Lastly, as further details of the data submission and compliance threshold are determined by CMS, we anticipate communicating these details through the CMS HQRP Web site, listserv messages via the Post-Acute Care QRP listserv, MLN Connects® National Provider Calls & Events, MLN Connects® Provider eNews and announcements on Open Door Forums and Special Open Door Forums.

c. CAHPS® Participation Requirements for FY 2018 APU Determination and Determinations for Subsequent Years

In the FY 2015 Hospice Wage Index final rule, we added the CAHPS® Hospice Survey to the Hospice Quality Reporting Program requirements for the FY 2017 payment determination and determinations for subsequent FY APU years (79 FR 50491).

In the FY 2017 Hospice Wage Index final rule, we finalized that to meet the HQRP requirements for the FY 2018, FY 2019 and FY 2020 APU payment determinations, hospices would collect survey data on a monthly basis for the months of January 1, 2016 through December 31, 2016 to qualify for the full FY 2018 APU; hospices would collect survey data on a monthly basis for the months of January 1, 2017 through December 31, 2017, to qualify for the full FY 2019 APU, and hospices would collect survey data on a monthly basis for the months of January 1, 2018 through December 31, 2018 for the full FY 2020 APU (81 FR 25529–25530). We are proposing in this FY 2018 proposed rule, that to meet the HQRP requirements for the FY 2021 APU payment determination, hospices would collect survey data on a monthly basis for the months of January 1, 2019 through December 31, 2019 to qualify for the FY 2021 APU. We are additionally proposing in this FY 2018 proposed rule, that to meet the HQRP requirements for the FY 2022 APU payment determination, hospices would collect survey data on a monthly basis for the months of January 1, 2020 through December 31, 2020 to qualify for the FY 2022 APU.

10. HQRP Submission Exemption and Extension Requirements for the FY 2019 Payment Determination and Subsequent Years

a. Extraordinary Circumstances Exemption and Extension

In the FY 2015 Hospice Wage Index final rule (79 FR 50488), we finalized our proposal to allow hospices to request, and for CMS to grant, exemptions/extensions for the reporting of required HIS quality data when there are extraordinary circumstances beyond the control of the provider. Such extraordinary circumstances may include, but are not limited to, acts of nature or other systemic issues with our data systems. We further finalized that hospices must request such an exemption or extension within 30 days of the date that the extraordinary circumstances occurred.

In certain instances, however, it may be difficult for hospices to timely evaluate the impact of extraordinary circumstances within 30 calendar days. For other quality reporting programs such as the Hospital Inpatient Quality Reporting (81 FR 57182), Inpatient Rehabilitation Facility Quality Reporting Program (81 FR 52125) and the Long-term Care Hospital Quality Reporting Program (81 FR 25205), we have reevaluated our policy and subsequently finalized through rulemaking an extension of that period of time to 90 calendar days. We are therefore proposing to extend the deadline for submitting an exemption or extension request to 90 calendar days from the qualifying event which is preventing a hospice from submitting their quality data for the HQRP. We believe that extending the deadline to 90 calendar days would allow hospices more time to determine whether it is necessary and appropriate to submit an exemption or extension request and to provide a more comprehensive account of the qualifying event in their request form to CMS. For example, if a hospice has suffered damage due to a hurricane on January 1st, it would have until March 31st to submit a request form to CMS via email to the HQRP mailbox at *HospiceQRPReconsiderations@cms.hhs.gov.*

Further, while we finalized our policy in the past for exception/extension for the submission of the HIS data, we propose to extend this policy beyond the submission of the HIS date to submission of the CAHPS® Hospice Survey data, given that multiple data submission processes could be impacted by the same qualifying event.

Therefore, we are proposing for FY 2019 payment determination and subsequent payment determinations to extend the period of time a hospice may have to submit a request for an extension or exception for quality reporting purposes from 30 calendar days to 90 calendar days after the date that the extraordinary circumstances occurred, by submitting a request to CMS via email to the HQRP mailbox at *HospiceQRPReconsiderations@cms.hhs.gov.* Exemption or extension requests sent to us through any other channel will not be considered valid. The request for an exemption or extension must contain all of the finalized requirements as outlined on our Web site at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Hospice-Quality-Reporting/Extensions-and-Exemption-Requests.html.*

If a hospice is granted an exemption or extension, timeframes for which an exemption or extension is granted will be applied to the new timeliness requirement so such hospices are not penalized. If a hospice is granted an exemption, we will not require that the hospice submit HIS and/or CAHPS® Hospice Survey data for a given period of time. By contrast, if we grant an extension to a hospice, the hospice will still remain responsible for submitting data collected during the timeframe in question, although we will specify a revised deadline by which the hospice must submit these quality data.

This process does not preclude us from granting extensions/exemptions to hospices that have not requested them when we determine that an extraordinary circumstance, such as an act of nature, affects an entire region or locale. We may grant an extension/exemption to a hospice if we determine that a systemic problem with our data collection systems directly affected the ability of the hospice to submit data. If we make the determination to grant an extension/exemption to hospices in a region or locale, we will communicate this decision through the various means, including the CMS HQRP Web site, listserv messages via the Post-Acute Care QRP listserv, MLN Connects® National Provider Calls & Events, MLN Connects® Provider eNews and announcements on Open Door Forums

and Special Open Door Forums. We are soliciting comments on these proposals.

b. Volume-Based Exemption for CAHPS® Hospice Survey Data Collection and Reporting Requirements

We previously finalized a volume-based exemption for CAHPS® Hospice Survey Data Collection and Reporting requirements in the FY 2017 Final Rule (81 FR 52181). Hospices that have fewer than 50 survey-eligible decedents/caregivers in the period from January 1, 2017 through December 31, 2017 are eligible to apply for an exemption from CAHPS® Hospice Survey data collection and reporting requirements for the FY 2020 payment determination (corresponds to the CY 2018 data collection period). To qualify, hospices must submit an exemption request form for the FY 2020 APU. The exemption request form is available on the official CAHPS® Hospice Survey Web site *http://www.hospiceCAHPSsurvey.org.* Hospices that intend to claim the size exemption are required to submit to CMS their total unique patient count for the period of January 1, 2017 through December 31, 2017. The due date for submitting the exemption request form for the FY 2020 APU is December 31, 2018. Small hospices that meet the exemption for size criteria for FY 2020 must complete an exemption form for FY 2020. Exemptions for size are active for 1 year only. If a hospice continues to meet the eligibility requirements for this exemption in future FY APU periods, the organization needs to request the exemption annually for every applicable FY APU period.

Hospices that have fewer than 50 survey-eligible decedents/caregivers in the period from January 1, 2018 through December 31, 2018 are eligible to apply for an exemption from CAHPS® Hospice Survey data collection and reporting requirements for the FY 2021 payment determination. Hospices that intend to claim the size exemption are required to submit to CMS their total unique patient count for the period of January 1, 2018 through December 31, 2018. The due date for submitting the exemption request form for the FY 2021 APU is December 31, 2019. Small hospices that meet the exemption for size criteria for FY 2021 must complete an exemption form for FY 2021.

Hospices that have fewer than 50 survey-eligible decedents/caregivers in the period from January 1, 2019 through December 31, 2019 are eligible to apply for an exemption from CAHPS® Hospice Survey data collection and reporting requirements for the FY 2022 payment determination. Hospices that intend to claim the size exemption are required to submit to CMS their total unique patient count for the period of January 1, 2019 through December 31, 2019. The due date for submitting the exemption request form for the FY 2022 APU is December 31, 2020. If a hospice continues to meet the eligibility requirements for this exemption in future FY APU periods, the organization should request the exemption annually for every applicable FY APU period.

c. Newness Exemption for CAHPS® Hospice Survey Data Collection and Reporting Requirements

CMS previously finalized a one-time newness exemption for hospices that meet the criteria (81 FR 52181). Accordingly, hospices that are notified about their Medicare CCN after January 1, 2018 are exempted from the FY 2020 APU CAHPS® Hospice Survey requirements due to newness. No action is required on the part of the hospice to receive this exemption. The newness exemption is a one-time exemption from the survey. Likewise, hospices notified about their Medicare CCN after January 1, 2019 are exempted from the FY 2021 APU CAHPS® Hospice Survey and hospices notified about their Medicare CCN after January 1, 2020 are exempted from the FY 2022 APU CAHPS® Hospice Survey requirements.

11. CAHPS® Hospice Survey Participation Requirements for the FY 2020 APU and Subsequent Years

The CAHPS® Hospice Survey of CMS' Hospice Quality Reporting Program is used to collect data on the experiences of hospice patients and the primary caregivers listed in their hospice records. Readers who want more information are referred to our extensive discussion of the Hospice Experience of Care prior to our proposal for the public reporting of measures should refer to 79 FR 50452 and 78 FR 48261.

a. Background and Description of the CAHPS® Hospice Survey

The CAHPS® Hospice Survey is the first standardized national survey available to collect information on patient's and informal caregiver's experience of hospice care. Patient-centered experience measures are a key component of the CMS Quality Strategy, emphasizing patient-centered care by rating experience as a means to empower patients and their caregivers and improving the quality of their care.[28] In addition, the survey introduces standard survey administration protocols that allow for fair comparisons across hospices.

Details regarding CAHPS® Hospice Survey national implementation, survey administration, participation requirements, exemptions from the survey's requirements, hospice patient and caregiver eligibility criteria, fielding schedules, sampling requirements, survey instruments, and the languages that are available for the survey, are all available on the official CAHPS® Hospice Survey Web site, *www.HospiceCAHPSsurvey.org* and in the *CAHPS® Hospice Survey Quality Assurance Guidelines (QAG),* which is posted on the Web site.

b. Overview of Proposed Measures

The CAHPS Hospice Survey was developed in line with the U.S. Department of Health and Human Services' Transparency Initiative to measure patient experience. Unlike the Hospital CAHPS® Survey deployed in 2006 (71 FR 48037 through 48039) and other subsequent CAHPS® surveys, the CAHPS® Hospice Survey is administered after the patient is deceased and queries the decedent's primary caregiver regarding the patient and family experience of care. National implementation of the CAHPS® Hospice Survey commenced January 1, 2015 as stated in the FY 2015 Hospice Wage Index and Payment Rate Update final rule (79 FR 50452).

The survey consists of 47 questions and is available (using the mailed version) in English, Spanish, Chinese, Russian, Portuguese, Vietnamese, Polish, and Korean. It covers topics such as access to care, communications, experience at hospice facilities, and interactions with hospice staff. The survey also contains two global rating questions and asks for self-reported demographic information (race/ethnicity, educational attainment level, languages spoken at home, among others).

The CAHPS® Hospice Survey measures received NQF endorsement on October 26th, 2016 (NQF number 2651). Measures derived from the CAHPS® Hospice Survey include six multi-item (composite) measures and two global ratings measures under NQF 2651. We are proposing to adopt these eight survey-based measures for the CY 2018 data collection period and for subsequent years. We believe these survey-based measures will be useful in assessing aspects of hospice care where the family/primary caregiver is the most useful or only source of information, and to allow meaningful and objective comparisons between hospice

[28] CMS National Quality Strategy 2016. Available at: *https://www.cms.gov/medicare/quality-initiatives-patient-assessment-instruments/qualityinitiativesgeninfo/downloads/cms-quality-strategy.pdf.*

providers. The six CAHPS® Hospice Survey composite survey-based measures are:

- Hospice Team Communication;
- Getting Timely Care;
- Treating Family Member with Respect;
- Getting Emotional and Religious Support;
- Getting Help for Symptoms; and
- Getting Hospice Care Training.

Each of the six composite survey-based measures consists of two or more questions. The two global survey-based measures are:

- Rating of Hospice; and
- Willingness to Recommend Hospice.

The two global survey-based measures are comprised of a single question each and ask the primary caregiver of the decedent to rate the care provided by the hospice facility and his or her willingness to recommend the hospice to family and friends. More information about these measures can be found on the official CAHPS® Hospice Survey Web site, *www.HospiceCAHPSsurvey.org* and in the *CAHPS® Hospice Survey Quality Assurance Guidelines (QAG),* which is posted on the Web site.

The eight survey-based measures we are proposing were included on the CY 2016 MUC [29] list, and reviewed by the MAP.[30]

- CAHPS® Hospice Survey: Rating of Hospice (MUC ID: MUC16–31)
- CAHPS® Hospice Survey: Hospice Team Communications (MUC16–32)
- CAHPS® Hospice Survey: Willingness to Recommend (MUC16–33)
- CAHPS® Hospice Survey: Getting Hospice Care Training (MUC16–35)
- CAHPS® Hospice Survey: Getting Timely Care (MUC16–36)
- CAHPS® Hospice Survey: Getting Emotional and Religious Support (MUC16–37)
- CAHPS® Hospice Survey: Getting Help for Symptoms (MUC16–39)
- CAHPS® Hospice Survey: Treating Family Member with Respect (MUC16–40)

The MAP supported rulemaking for all eight ''patient-reported'' measures derived from the CAHPS® Hospice Survey. The MAP noted that the CAHPS® Hospice Survey measures may offer an indication of global quality of care by including the perspective of both patients and their caregivers.

c. Data Sources

As discussed in the *CAHPS® Hospice Survey Quality Assurance Guidelines V3.0* (QAG V3.0) (*http://www.hospicecahpssurvey.org/en/quality-assurance-guidelines/*), the survey has three administration methods: Mail-only, telephone only, and mixed mode (mail with telephone follow-up of non-respondents). We previously finalized the participation requirements for the FY 2018 and FY 2019 Annual Payment Updates (80 FR 47194). To summarize, to meet the CAHPS® Hospice Survey requirements for the HQRP, we are proposing that hospice facilities must contract with a CMS-approved vendor to collect survey data for eligible patients on a monthly basis and report that data to CMS on the hospice's behalf by the quarterly deadlines established for each data collection period. The list of approved vendors is available at: *http://www.hospicecahpssurvey.org/en/approved-vendor-list.*

Hospices are required to provide lists of the patients who died under their care, along with the associated primary caregiver information, to their respective survey vendors to form the samples for the CAHPS® Hospice Survey. We emphasize the importance of hospices providing complete and accurate information to their respective survey vendors in a timely manner. Hospices must contract with an approved CAHPS® Hospice Survey vendor to conduct the survey on their behalf. Hospices are responsible for making sure their respective survey vendors meet all data submission deadlines. Vendor failures to submit data on time are the responsibility of the hospices.

i. Requirements for the FY 2020 Annual Payment Update

To meet participation requirements for the FY 2020 annual payment update (APU), Medicare-certified hospices must collect CAHPS® Hospice Survey data on an ongoing monthly basis from January 2018 through December 2018 (all 12 months) in order to receive their full payment for the FY 2020 APU. All data submission deadlines for the FY 2020 APU are in Table 17. CAHPS® Hospice Survey vendors must submit data by the deadlines listed in Table 17 for all APU periods listed in the table and moving forward. There are no late submissions permitted after the deadlines, except for extraordinary circumstances beyond the control of the provider as discussed above.

TABLE 17—CAHPS® HOSPICE SURVEY DATA SUBMISSION DATES FOR THE APU IN FY 2020, FY 2021, AND FY 2022

Sample months (that is, month of death) [1]	Quarterly data submission deadlines [2]
FY 2020 APU	
January–March 2018 (Q1).	August 8, 2018.
April–June 2018 (Q2)	November 14, 2018.
July–September 2018 (Q3).	February 13, 2019.
October–December 2018 (Q4).	May 8, 2019.
FY 2021 APU	
January–March 2019 (Q1).	August 14, 2019.
April–June 2019 (Q2)	November 13, 2019.
July–September 2019 (Q3).	February 12, 2020.
October–December 2019 (Q4).	May 13, 2020.
FY 2022 APU	
January–March 2020 (Q1).	August 12, 2020.
April–June 2020 (Q2)	November 12, 2020.[3]
July–September 2020 (Q3).	February 10, 2021.
October–December 2020 (Q4).	May 12, 2021.

[1] Data collection for each sample month initiates 2 months following the month of patient death (for example, in April for deaths occurring in January).

[2] Data submission deadlines are the second Wednesday of the submission months, which are the months August, November, February, and May.

[3] Second Wednesday is Veterans Day Holiday.

ii. Requirements for the FY 2021 Annual Payment Update

To meet participation requirements for the FY 2021 APU, Medicare-certified hospices must collect CAHPS® Hospice Survey data on an ongoing monthly basis from January 2019 through December 2019 (all 12 months) in order to receive their full payment for the FY 2021 APU. All data submission deadlines for the FY 2021 APU are in Table 17. CAHPS® Hospice Survey vendors must submit data by the deadlines listed in Table 17 for all APU periods listed in the table and moving forward. There are no late submissions permitted after the deadlines, except for extraordinary circumstances beyond the control of the provider as discussed above.

[29] CMS, *List of Measures Under Consideration for December 1, 2016. Available at: https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/QualityMeasures/Downloads/Measures-under-Consideration-List-for-2016.pdf.*

[30] The National Quality Forum. *MAP 2016–2017 Preliminary Recommendations.* National Quality Forum, 2016 Recommendations for Measures Under Consideration, Jan. 2017. Available at: *http://www.qualityforum.org/map/.*

iii. Requirements for the FY 2022 Annual Payment Update

To meet participation requirements for the FY 2022 APU, Medicare-certified hospices must collect CAHPS® Hospice Survey data on an ongoing monthly basis from January 2020 through December 2020 (all 12 months) in order to receive their full payment for the FY 2022 APU. All data submission deadlines for the FY 2022 APU are in Table 17. CAHPS® Hospice Survey vendors must submit data by the deadlines listed in Table 17 for all APU periods listed in the table and moving forward. There are no late submissions permitted after the deadlines, except for extraordinary circumstances beyond the control of the provider as discussed above.

d. Measure Calculations

As noted above, we are proposing to adopt six composite CAHPS® Hospice Survey-based measures and two global survey-based measures. As with other measures adopted for HQRP, a hospice's performance for a given payment determination year will be based upon the successful submission of data required in accordance with the administrative, form, manner and timing requirements established for the program. Therefore, hospices' scores on the CAHPS® Hospice Survey-based measures will not affect whether they are subject to the 2.0 percentage point payment reduction for hospices that fail to report data required to be submitted.

We propose that CAHPS Hospice Survey scores for a given hospice be displayed as ''top-box'' scores, with the national average top-box score for participating hospices provided for comparison. Top-box scores reflect the proportion of caregiver respondents that endorse the most positive response(s) to a given measure, such as the proportion that rate the hospice a 9 or 10 out of 10 on a 0 to 10 scale, or the proportion that report that they ''always'' received timely care. The top-box numerator for each question within a measure is the number of respondents that endorse the most positive response(s) to the question. The denominator includes all respondents eligible to respond to the question, with one exception. The exception is the Getting Hospice Care Training measure; for this measure, the measure score is calculated only among those respondents who indicated that their family member received hospice care at home or in an assisted living facility.

For additional information on the specifications of these measures, including details regarding top-box scoring methodology and mode and case-mix adjustment, please refer to the CAHPS® Hospice Survey Web page at *http://www.hospicecahpssurvey.org/en/.*

i. Composite Survey-Based Measures

Unadjusted hospice scores on each composite CAHPS® Hospice Survey-based measure would be calculated by determining the proportion of ''top-box'' responses for each question within the composite and averaging these proportions over all the questions in the composite measure. For example, to assess hospice performance on the composite measure CAHPS® Hospice Survey—Hospice Team Communication, we would calculate the proportion of top-box responses for each of the measure's six questions, add those proportions together, and divide by the number of questions in the composite measure (in this case, six).

As a specific example, we take a theoretical hospice facility that had 50 surveys completed and received the proportions of ''top-box'' responses through sample calculations:

- 25 ''top-box'' responses out of 50 total responses on Question One
- 40 ''top-box'' responses out of 50 total responses on Question Two
- 50 ''top-box'' responses out of 50 total responses on Question Three
- 35 ''top-box'' responses out of 50 total responses on Question Four
- 45 ''top-box'' responses out of 50 total responses on Question Five
- 40 ''top-box'' responses out of 50 total responses on Question Six

Based on the above responses, we would calculate that hospice's unadjusted measure score for public reporting as follows:

$$\text{Publicly Reported Score} = \frac{(0.5 + 0.8 + 1 + 0.7 + 0.9 + 0.8)}{6}$$

This calculation would give this example hospice an unadjusted score of 0.78 or 78 percent for the Hospice Team Communication measure for purposes of public reporting. We note that an adjusted hospice score would be calculated by adjusting the score for each question for differences in the characteristics of decedents and caregivers across hospices and for mode as described in section 11.e, and then averaging across questions within the measure as described here. Further detailed information regarding scoring and risk adjustment can be found at the CAHPS® Hospice Survey Web site (*http://www.hospicecahpssurvey.org/en/technical-specifications/*).

ii. Global Survey-Based Measures

We are proposing to adopt two global CAHPS® Hospice Survey measures. CAHPS® Hospice Survey—Rating of Hospice asks the primary caregiver of the decedent to rate the care provided by the hospice on a scale of 0 to 10, and CAHPS® Hospice Survey—Willingness to Recommend asks about the caregiver's willingness to recommend the hospice to family and friends on a scale of ''Definitely No'' to ''Definitely Yes''. Unadjusted hospice performance on each of the two global CAHPS® Hospice Survey-based measures would be calculated by the proportion of respondents providing high-value responses (that is, a 9 to 10 rating or ''Definitely Yes'') to the survey questions over the total number of respondents. For example, if a hospice received 45 9- and 10-point ratings out of 50 responses, this hospital would receive a 0.9 or 90 percent unadjusted score, which would then be adjusted for differences in the characteristics of decedents and caregivers across hospices and modes, as described in section 12.E.

iii. Cohort

The CAHPS® Hospice Survey is administered to all eligible patients/caregivers—or a random sample thereof—who meet the eligibility criteria. Eligible patients, regardless of insurance or payment, can participate.

For purposes of each survey-based measure captured in the CAHPS® Hospice Survey, an ''eligible patient'' is a decedent 18 years or older:

- With death at least 48 hours following last admission to hospice care
- for whom there is a caregiver of record
- whose caregiver is someone other than a non-familial legal guardian
- for whom the caregiver has a U.S. or U.S. Territory home address

Patients who are still alive or whose admission to the hospice resulted in a

live discharge, are not eligible to participate in the survey. In addition, decedents/caregivers who initiate or voluntarily request that the hospice not reveal the patient's identity; and/or not survey the patient/caregiver (''no publicity patients/caregivers'') are excluded from the sample.

e. Risk Adjustment

The CAHPS® Hospice Survey measures assess activities that are fully under the control of hospice care professionals and/or hospice organizations. In order to ensure fair comparisons in public reporting, we believe it is necessary and appropriate to adjust for factors that are not directly related to hospice performance, such as patient mix, for these CAHPS® Hospice Survey measures. The survey based measures are adjusted for decedent and caregiver characteristics (including the lag time between patient death and survey response; decedent's age, payer for hospice care, decedent's primary diagnosis, decedent's length of final episode of hospice care, caregiver's education, decedent's relationship to caregiver, caregiver's preferred language and language in which the survey was completed, and caregiver's age) known to be associated with systematic difference in survey responses.

i. Patient Mix Adjustment

Previous research, on both CAHPS® surveys and other types of surveys, has identified respondent characteristics that are not under the control of the entities being assessed but tend to be related to survey responses. Hence, variations in the proportion of respondents with such characteristics will be associated with variations in survey responses that are unrelated to the actual quality of hospice care. To ensure that comparisons between hospices reflect differences in performance rather than differences in patient and/or caregiver characteristics, publicly reported hospice scores will be adjusted for variations of such characteristics across hospices. This adjustment is performed using a linear regression model applied to all data within a quarter, with indicator variables for each hospice and each characteristic as an independent variable in the model.

ii. Mode Adjustment

We conducted an experiment to determine whether survey mode adjustments were needed to fairly compare CAHPS® Hospice Survey scores. The experiment found that mode adjustments are needed. Publicly reported CAHPS® Hospice Survey scores will be adjusted for the mode of survey administration, which affects scores but is not related to quality of hospice care. (Authorized survey modes are: Mail-only, telephone-only, and mail with telephone follow up, also called mixed mode.) Mode adjustment is performed prior to patient-mix adjustment; a mode adjustment value is added/subtracted (depending on the mode) to each response to the survey by mail-only mode or mixed mode. Responses obtained using telephone-only mode are not adjusted since this is the reference mode.

As a result of the risk adjustment methodologies proposed here, the final percentages may vary from the unadjusted percentage as calculated in the examples provided above.

f. For Further Information About the CAHPS® Hospice Survey

We encourage hospices and other entities to learn more about the survey on *www.hospicecahpssurvey.org.* For direct questions, please contact the CAHPS® Hospice Survey Team at *hospicecahpssurvey@HCQIS.org* or telephone 1–844–472–4621.

12. HQRP Reconsideration and Appeals Procedures for the FY 2018 Payment Determination and Subsequent Years

In the FY 2015 Hospice Wage Index final rule (79 FR 50496), we notified hospice providers on how to seek reconsideration if they received a noncompliance decision for the FY 2016 payment determination and subsequent years. A hospice may request reconsideration of a decision by CMS that the hospice has not met the requirements of the HQRP for a particular period.

We clarified that any hospice that wishes to submit a reconsideration request must do so by submitting an email to CMS containing all of the requirements listed on the HQRP Web site at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Hospice-Quality-Reporting/Reconsideration-Requests.html.* Electronic email sent to *HospiceQRPReconsiderations@cms.hhs.gov* is the only form of submission that will be accepted. Any reconsideration requests received through any other channel including the United States Postal Service (USPS) or phone will not be considered as a valid reconsideration request. In the FY 2017 final rule we further clarified that providers should submit reconsideration requests of decision by CMS that the hospice has not met the CAHPS® Hospice Survey requirements using the same process (81 FR 52181) (Details about the reports and emails received after data submission are in the *CAHPS® Hospice Quality Assurance Guidelines,* which is available on the official CAHPS® Hospice Survey Web site, *www.hospicecahpssurvey.org).* We codified this process at § 418.312(h). In addition, we codified at § 418.306(b)(2) that beginning with FY 2014 and each subsequent FY, the Secretary shall reduce the market basket update by 2 percentage points for any hospice that does not comply with the quality data submission requirements for that FY and solicited comments on all of the proposals and the associated regulations text at § 418.312 and in § 418.306 in section VI. Official instructions regarding the payment reduction reconsideration process can be located under the Regulations and Guidance, Transmittals, 2015 Transmittals Web site at *https://www.cms.gov/Regulations-and-Guidance/Guidance/Transmittals/2017-Transmittals.html.*

In the past, only hospices found to be non-compliant with the reporting requirements set forth for a given payment determination received a notification from CMS of this finding along with instructions for requesting reconsideration in the form of a USPS letter. In the FY 2016 Hospice Wage Index final rule (80 FR 47198), we stated that we would use the QIES CASPER reporting system as an additional mechanism to communicate to hospices regarding their compliance with the reporting requirements for the given reporting cycle. We have implemented this additional communication mechanism via the CASPER Hospice Timeliness Compliance Threshold Report previously discussed in the FY 2017 Hospice Wage Index rule at 81 FR 25527 and 25528. We will continue to send notification of noncompliance via delivery of a letter via the USPS. We previously finalized our proposal (80 FR 47198) to publish a list of hospices who successfully meet the reporting requirements for the applicable payment determination on the CMS HQRP Web site. The list of providers found to be compliant with the FY 2017 APU requirements can be found on the CMS HQRP Web site here: *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Hospice-Quality-Reporting/HQRP-Requirements-and-Best-Practices.html.*

13. Confidential Feedback Reports

As part of our effort to promote use of standardized quality data to improve quality of care, in December 2016, we made available two new provider feedback reports: The Hospice-Level

Quality Measure Report and the Patient Stay-Level Quality Measure Report. These confidential feedback reports are available to each hospice using the CASPER system, and are part of the class of CASPER reports known as Quality Measure (QM) Reports. These reports are separate from public reporting and are for provider viewing only, for the purposes of internal provider quality improvement. These reports are on-demand and thus enable hospice providers to view and compare their performance to the national average for a reporting period of their choice.

Providers are able to view their data and information at both the hospice and patient stay levels for it's HIS based quality measures. The CASPER hospice-level QM Reports contain information such as the numerator, denominator, hospice-level QM score, and national average. The CASPER patient stay-level QM Reports show whether each patient stay is counted toward each quality measure. The HIS based QMs reported in both reports include:

- NQF #1641 Treatment Preferences
- NQF #1647 Beliefs/Values
- NQF #1634 Pain Screening
- NQF #1637 Pain Assessment
- NQF #1639 Dyspnea Screening
- NQF #1638 Dyspnea Treatment
- NQF #1617 Bowel Regimen

For more information on the CASPER QM Reports, we refer readers to the CASPER QM Factsheet on the HQRP Web site at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Hospice-Quality-Reporting/HQRP-Requirements-and-Best-Practices.html.* This fact sheet contains detailed information about each CASPER QM report currently available, the data included in the reports, and how providers can use the reports as part of their Quality Assessment and Performance Improvement (QAPI) efforts. For technical information on the reports and how to access the CASPER QM Reports, we refer readers to: *https://www.qtso.com/hospicetrain.html.*

As new HIS measures are implemented in the HQRP, we will continue to expand the functionality of the QM reports to allow providers to view data on additional HIS measures. We will announce refinements and additions to the QM reports through sub-regulatory communication channels and in future rulemaking cycles.

We also propose to provide hospices with preview reports of their data prior to the quarterly publication of CAHPS® Hospice Survey data on the Compare site. The reports will be provided through the CASPER reporting system. Each hospice will receive only its own, individual reports.

14. Public Display of Quality Measures and Other Hospice Data for the HQRP

Under section 1814(i)(5)(E) of the Act, the Secretary is required to establish procedures for making any quality data submitted by hospices available to the public. These procedures shall ensure that a hospice has the opportunity to review the data that is to be made public for the hospice prior to such data being made public. The Secretary shall report quality measures that relate to hospice care provided by hospice programs on a publicly available CMS Web site.

In the FY 2017 rule, we discussed our analysis of HIS data to inform which measures were eligible for public reporting and reportability analysis to determine data selection period and minimum denominator size for measures to be publicly reported. Based on analysis results, we determined that all 7 HIS quality measures adopted for the FY 2016 and beyond (NQF #1634, NQF #1637, NQF #1639, NQF #1638, NQF #1641, NQF #1647, NQF #1617), calculated based on a rolling 12 month data selection period, to be eligible for public reporting with a minimum denominator size of 20 patient stays. For additional details on these analyses, we refer readers to the FY 2017 final rule (81 FR 52183 through 52184).

In the FY 2017 final rule we also clarified policies for reportability analyses for new measures. As stated in the FY 2017 final rule, new measures will undergo reportability analysis to determine (1) appropriateness for public reporting and (2) appropriate data selection period. In accordance with discussion in the prior year's rule, we will use the same analytic approach used in previous reportability analyses to determine data selection period and minimum denominator size for the Hospice and Palliative Care Composite Process Measure—Comprehensive Assessment at Admission. We will begin reportability analyses for the Hospice Visits When Death is Imminent Measure Pair once data for the measure are available. Results of reportability analyses conducted for these new measures will be communicated through future rulemaking.

To meet the Affordable Care Act's requirement for making quality measure data public, we are developing a CMS Hospice Compare Web site, which will allow consumers, providers and stakeholders to search for all Medicare-certified hospice providers and view their information and quality measure scores. We anticipate that public reporting of HQRP data on the CMS Compare Web site will begin sometime in the summer of CY 2017. To help providers prepare for public reporting, we will offer opportunities for stakeholder engagement and education prior to the rollout of a CMS Hospice Compare site. We will offer outreach opportunities for providers through CMS HQRP Public reporting Web page: *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Hospice-Quality-Reporting/Hospice-Quality-Public-Reporting.html,* listserv messages via the Post-Acute Care QRP listserv, MLN Connects® National Provider Calls & Events, MLN Connects® Provider eNews and announcements on Open Door Forums and Special Open Door Forums. Finally, we will offer educational support and outreach to all hospice providers on the systems and processes for reviewing their data prior to public reporting; availability of educational support and outreach opportunities will be communicated through the listed channels above.

We will provide hospices an opportunity to preview their quality measure data prior to publicly reporting information. These quality measure data reports or ''preview reports'' will be made available in the CASPER system prior to public reporting and will offer providers the opportunity to preview their quality measure data prior to public reporting on the CMS Hospice Compare Web site. We will provide hospices 30 days to review the preview report beginning from the date on which they can access the report. Hospices will have an opportunity to request review of their data by CMS during the 30-day preview period if they believe that errors in data submitted to CMS may have resulted in incorrect measure scores and can submit proof along with a plan describing how the errors will be corrected. We will review these requests and if we confirm that the errors have affected the measures and agree to correct the measure, we will suppress the measure on the Hospice Compare Web site for one time only and display the corrected measure during the subsequent quarterly refresh of the Compare Web site. When the preview reports are ready for providers to access, anticipated summer of CY 2017 prior to the release of Hospice Compare, we will post the policies and procedures for providers to submit requests for reviewing of their data by CMS on the CMS HQRP Web site: *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-*

Instruments/Hospice-Quality-Reporting/Hospice-Quality-Public-Reporting.html.

CMS encourages hospices to use CASPER QM Reports (see section III.D.14 of this proposed rule) to review their HIS quality measures after they submit the HIS data to CMS. If hospices determine that erroneous data have been submitted, they should submit either of these two types of HIS records: Modify existing record or inactivate existing record to correct their data. HIS data corrected before the data are frozen for the creation of the preview reports will be reflected in the preview reports.

We propose to begin public reporting of CAHPS® Hospice Survey measures in 2018. Specifically, we are proposing to publicly report data in winter CY 2018 on all eight CAHPS® Hospice Survey measures. Scores would be displayed based on eight rolling quarters of data and would initially use CAHPS® Hospice Survey data collected from caregivers of patients who died while receiving hospice care between April 1, 2015 and March 31, 2017. We are proposing that the display of these scores be updated quarterly, and that scores be displayed only for those hospices for which there are 30 or more completed questionnaires during the reporting period. Scores will not be displayed for hospices with fewer than 30 completed questionnaires during the reporting period.

Like other CMS Compare Web sites, the Hospice Compare Web site will, in time, feature a quality rating system that gives each hospice a rating of between 1 and 5 stars. Hospices will have prepublication access to their own agency's quality data, which enables each agency to know how it is performing before public posting of data on the Hospice Compare Web site. Public comments regarding how the rating system would determine a hospice's star rating and the methods used for calculations, as well as a proposed timeline for implementation will be announced via the CMS HQRP Web page, listserv messages via the Post-Acute Care QRP listserv, MLN Connects® National Provider Calls & Events, MLN Connects® Provider eNews and announcements on Open Door Forums and Special Open Door Forums. We will announce the timeline for development and implementation of the star rating system in future rulemaking.

Lastly, as part of our ongoing efforts to make healthcare more transparent, affordable, and accountable for all hospice stakeholders, we have posted a hospice directory and quality data on a public data set located at *https://data.medicare.gov.* This data will serve as a helpful resource regarding information on Medicare-certified hospice agencies throughout the nation. In an effort to move toward public reporting of hospice data, we have initially posted demographic data of hospice agencies that have been registered with Medicare. This list includes high-level demographic data for each agency, including provider name, address, phone numbers, ownership type, CCN, profit status, and date of original CMS certification. The posting of this hospice data directory occurred on June 14, 2016 and will be refreshed quarterly. Information can be located at *https://data.medicare.gov/data/hospice-directory.* Additionally, we have posted two hospice data files containing national level aggregate quality data regarding seven HIS quality measures and CAHPS® Hospice Survey measures in December 2016. These data file are a one-time release with a goal to make quality data available prior to the release of the Hospice Compare in summer of CY 2017. Additional details regarding hospice datasets will be announced via the CMS HQRP Web page, listserv messages via the Post-Acute Care QRP listserv, MLN Connects® National Provider Calls & Events, MLN Connects® Provider eNews and announcements on Open Door Forums and Special Open Door Forums. In addition, we have provided the list of CASPER/ASPEN contacts, Regional Office and State coordinators in the event that a Medicare-certified agency is either not listed in the database or the characteristics/administrative data (name, address, phone number, services, or type of ownership) are incorrect or have changed. To continue to meet Medicare enrollment requirements, all Medicare providers are required to report changes to their information in their enrollment application as outlined in the Provider-Supplier Enrollment Fact Sheet Series located at *https://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/downloads/MedEnroll_InstProv_FactSheet_ICN903783.pdf.* Once the Hospice Compare Web site is released in the summer of CY 2017, *https://data.medicare.gov* will post the official datasets used on the *Medicare.gov* Compare Web sites provided by CM.

IV. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Unless noted otherwise, all salary information is from the Bureau of Labor Statistics (BLS) Web site at *http://www.bls.gov/oes* and includes a fringe benefits package worth 100 percent of the base salary. The mean hourly wage rates are based on May, 2015 BLS data for each discipline.

Section 1814(i)(5)(C) of the Act requires that each hospice submit data to the Secretary on quality measures specified by the Secretary. This data must be submitted in a form and manner, and at a time specified by the Secretary.

We are soliciting public comment on each of these issues for the following sections of this document that contain information collection requirements (ICRs):

A. Hospice Item Set

In the FY 2014 Hospice Wage Index final rule (78 FR 48257), and in compliance with section 1814(i)(5)(C) of the Act, we finalized the specific collection of data items that support the following 7 NQF endorsed measures for hospice:

- NQF #1617 Patients Treated with an Opioid who are Given a Bowel Regimen,
- NQF #1634 Pain Screening,
- NQF #1637 Pain Assessment,
- NQF #1638 Dyspnea Treatment,
- NQF #1639 Dyspnea Screening,
- NQF #1641 Treatment Preferences,
- NQF #1647 Beliefs/Values Addressed (if desired by the patient).

We finalized the following two additional measures in the FY 2017 Hospice Wage Index final rule affecting FY 2019 payment determinations (81 FR 52163 through 52173):

- Hospice Visits when Death is Imminent
- Hospice and Palliative Care Composite Process Measure—Comprehensive Assessment at Admission

Data for the aforementioned 9 measures is collected via the HIS as

discussed in the FY 2017 Hospice Wage Index final rule (81 FR 52189) and covered under OMB control number 0938–1153. The HIS V2.00.0 was approved by the Office of Management and Budget on April 17, 2017 under control number 0938–1153. We are not proposing any new updates or additional collections of information in this proposed rule in regards to the Hospice Item Set or its constituent quality measures.

B. Summary of CAHPS® Hospice Survey Information Collection Requirements (OMB Control Number 0938–1257)

National Implementation of the Hospice Experience of Care Survey (CAHPs Hospice Survey) data measures are covered under OMB control number 0938–1257 and is summarized here for convenience. We have implemented patient experience surveys in a number of settings including Medicare, Medicare Advantage, and Part D Prescription Drug Plans, hospitals, and home health agencies. Other CAHPS® surveys exist for hemodialysis facilities, nursing homes, and physician practices. The hospice survey differs from most other CMS patient experience surveys because its target population is bereaved family members or close friends of patients who died in hospice care. Family members and friends are the best source of information regarding the entire trajectory of hospice care. In addition, many hospice patients are very ill and unable to answer survey questions.

Surveys are administered by CMS-approved survey vendors hired by hospice providers to conduct the survey on their behalf. The survey vendor may collect data in one of three modes: Mail-only, telephone-only, or mixed mode (mail with telephone follow-up). The sample consists of bereaved family members or close friends of patients who died while receiving hospice care (1) at home, (2) in a nursing home, or (3) an inpatient setting (that is, freestanding inpatient unit or acute care hospital). The questionnaire is composed of 47 items.

The estimated annualized burden hours and costs to respondents for the national implementation of the CAHPS® Hospice Survey are shown in Tables 18 and 19. Based on participation in national implementation in the CAHPS® Hospice Survey from Quarter 2 2015 through Quarter 1 2016, we assume that 3,414 hospices will administer the survey to an average of 278.7 cases. Thus, we estimate that the CAHPS® Hospice Survey will be administered to a maximum of 951,482 individuals each year for the duration of the collection period covered by this application for the purposes of national implementation. As not all sampled cases will complete the survey, this estimate reflects the maximum burden possible. The estimated number of responses is based on actual hospice participation in national implementation of the CAHPS® Hospice Survey.

Table 18 shows the estimated annualized burden for the respondents' time to participate in the national implementation data collection. The survey contains 47 items and is estimated to require an average administration time of 10.4 minutes in English (at a pace of 4.5 items per minute) and 12.5 minutes in Spanish (assuming 20 percent more words in the Spanish translation), for an average response time of 10.47 minutes or 0.174 hours (assuming that 1 percent of survey respondents complete the survey in Spanish). These burden and pace estimates are based on CMS' experience with the CAHPS® Hospice Survey and surveys of similar length that were fielded with Medicare beneficiaries. As indicated below, the annual total burden hours for survey participants are estimated to be 165,959.57 for the continued national implementation of the survey.

TABLE 18—ESTIMATED ANNUALIZED BURDEN HOURS FOR RESPONDENTS: NATIONAL IMPLEMENTATION OF THE CAHPS® HOSPICE SURVEY

Survey version	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
CAHPS® Hospice Survey	951,482	1	0.174	165,959.57
Total	951,482	1	0.174	165,959.57

Table 19 shows the cost burden to respondents associated with their time to complete a survey as part of national implementation. The annual total cost burden is estimated to be $7,710,481.60. This estimate is higher than the $3,034,789.70 estimated in the prior OMB filing, due to the increased number of hospices participating (and correspondingly, the increased number of respondents), as well as an increase in the average hourly rate.

TABLE 19—ESTIMATED ANNUALIZED COST BURDEN FOR RESPONDENTS: NATIONAL IMPLEMENTATION

Form name	Number of respondents	Total burden hours	Average hourly wage rate*	Total cost burden
CAHPS® Hospice Survey	951,482	165,959.57	*$46.46	$7,710,481.60
Total	951,482	165,959.57	*$46.46	$7,710,481.60

* Source: Data from the U.S. Bureau of Labor Statistics' May 2015 National Occupational Employment and Wage Estimates for all salary estimates (*http://www.bls.gov/oes*). This figure includes a 100% fringe benefit on an average wage of $23.23. Retrieved April 10, 2017.

If you comment on these information collection, that is, reporting, recordkeeping or third-party disclosure requirements, please submit your comments electronically as specified in the **ADDRESSES** section of this proposed rule.

Comments must be received by 5 p.m. June 26, 2017.

V. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

VI. Request for Information on CMS Flexibilities and Efficiencies

CMS is committed to transforming the health care delivery system—and the Medicare program—by putting an additional focus on patient-centered care and working with providers, physicians, and patients to improve outcomes. We seek to reduce burdens for hospitals, physicians, and patients, improve the quality of care, decrease costs, and ensure that patients and their providers and physicians are making the best health care choices possible. These are the reasons we are including this Request for Information in this proposed rule.

As we work to maintain flexibility and efficiency throughout the Medicare program, we would like to start a national conversation about improvements that can be made to the health care delivery system that reduce unnecessary burdens for clinicians, other providers, and patients and their families. We aim to increase quality of care, lower costs improve program integrity, and make the health care system more effective, simple and accessible.

We would like to take this opportunity to invite the public to submit their ideas for regulatory, subregulatory, policy, practice, and procedural changes to better accomplish these goals. Ideas could include payment system redesign, elimination or streamlining of reporting, monitoring and documentation requirements, aligning Medicare requirements and processes with those from Medicaid and other payers, operational flexibility, feedback mechanisms and data sharing that would enhance patient care, support of the physician-patient relationship in care delivery, and facilitation of individual preferences. Responses to this Request for Information could also include recommendations regarding when and how CMS issues regulations and policies and how CMS can simplify rules and policies for beneficiaries, clinicians, physicians, providers, and suppliers. Where practicable, data and specific examples would be helpful. If the proposals involve novel legal questions, analysis regarding CMS' authority is welcome for CMS' consideration. We are particularly interested in ideas for incentivizing organizations and the full range of relevant professionals and paraprofessionals to provide screening, assessment and evidence-based treatment for individuals with opioid use disorder and other substance use disorders, including reimbursement methodologies, care coordination, systems and services integration, use of paraprofessionals including community paramedics and other strategies. We are requesting commenters to provide clear and concise proposals that include data and specific examples that could be implemented within the law.

We note that this is a Request for Information only. Respondents are encouraged to provide complete but concise responses. This Request for Information is issued solely for information and planning purposes; it does not constitute a Request for Proposal (RFP), applications, proposal abstracts, or quotations. This Request for Information does not commit the U.S. Government to contract for any supplies or services or make a grant award. Further, CMS is not seeking proposals through this Request for Information and will not accept unsolicited proposals. Responders are advised that the U.S. Government will not pay for any information or administrative costs incurred in response to this Request for Information; all costs associated with responding to this Request for Information will be solely at the interested party's expense. We note that not responding to this Request for Information does not preclude participation in any future procurement, if conducted. It is the responsibility of the potential responders to monitor this Request for Information announcement for additional information pertaining to this request. In addition, we note that CMS will not respond to questions about the policy issues raised in this Request for Information. CMS will not respond to comment submissions in response to this Request for Information in the FY 2018 Hospice Wage Index and Payment Rate Update and Hospice Quality Reporting Requirements final rule. Rather, CMS will actively consider all input as we develop future regulatory proposals or future subregulatory policy guidance. CMS may or may not choose to contact individual responders. Such communications would be for the sole purpose of clarifying statements in the responders' written responses. Contractor support personnel may be used to review responses to this Request for Information. Responses to this notice are not offers and cannot be accepted by the Government to form a binding contract or issue a grant. Information obtained as a result of this Request for Information may be used by the Government for program planning on a nonattribution basis. Respondents should not include any information that might be considered proprietary or confidential. This Request for Information should not be construed as a commitment or authorization to incur cost for which reimbursement would be required or sought. All submissions become U.S. Government property and will not be returned. CMS may publicly post the public comments received, or a summary of those public comments.

VII. Regulatory Impact Analyses

A. Statement of Need

This proposed rule meets the requirements of our regulations at § 418.306(c), which requires annual issuance, in the **Federal Register**, of the hospice wage index based on the most current available CMS hospital wage data, including any changes to the definitions of Core-Based Statistical Areas (CBSAs), or previously used Metropolitan Statistical Areas (MSAs). This proposed rule would also update payment rates for each of the categories of hospice care, described in § 418.302(b), for FY 2018 as required under section 1814(i)(1)(C)(ii)(VII) of the Act. Section 411(d) of the Medicare Access and CHIP Reauthorization Act of 2015 (MACRA) amended section 1814(i)(1)(C) of the Act such that for hospice payments for FY 2018, the market basket percentage increase shall be 1 percent. Finally, section 3004 of the Affordable Care Act amended the Act to authorize a quality reporting program for hospices and this rule discusses changes in the requirements for the hospice quality reporting program in accordance with section 1814(i)(5) of the Act.

B. Overall Impacts

We estimate that the aggregate impact of the payment provisions in this proposed rule would result in an increase of $180 million in payments to hospices, resulting from the hospice payment update percentage of 1.0 percent. The impact analysis of this proposed rule represents the projected effects of the changes in hospice payments from FY 2017 to FY 2018. Using the most recent data available at the time of rulemaking, in this case FY

2016 hospice claims data, we apply the current FY 2017 wage index and labor-related share values to the level of care per diem payments and SIA payments for each day of hospice care to simulate FY 2017 payments. Then, using the same FY 2016 data, we apply the proposed FY 2018 wage index and labor-related share values to simulate FY 2018 payments. Certain events may limit the scope or accuracy of our impact analysis, because such an analysis is susceptible to forecasting errors due to other changes in the forecasted impact time period. The nature of the Medicare program is such that the changes may interact, and the complexity of the interaction of these changes could make it difficult to predict accurately the full scope of the impact upon hospices.

We have examined the impacts of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), the Congressional Review Act (5 U.S.C. 804(2) and Executive Order 13771 on Reducing Regulation and Controlling Regulatory Costs (January 30, 2017).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule: (1) Having an annual effect on the economy of $100 million or more in any 1 year, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). We estimate that this rulemaking is ''economically significant'' as measured by the $100 million threshold, and hence also a major rule under the Congressional Review Act. Accordingly, we have prepared a RIA that, to the best of our ability presents the costs and benefits of the rulemaking.

C. Anticipated Effects

The RFA requires agencies to analyze options for regulatory relief of small businesses if a rule has a significant impact on a substantial number of small entities. The great majority of hospitals and most other health care providers and suppliers are small entities by meeting the Small Business Administration (SBA) definition of a small business (in the service sector, having revenues of less than $7.5 million to $38.5 million in any 1 year), or being nonprofit organizations. For purposes of the RFA, we consider all hospices as small entities as that term is used in the RFA. HHS's practice in interpreting the RFA is to consider effects economically ''significant'' only if they reach a threshold of 3 to 5 percent or more of total revenue or total costs. The effect of the proposed FY 2018 hospice payment update percentage results in an overall increase in estimated hospice payments of 1.0 percent, or $180 million. Therefore, the Secretary has determined that this proposed rule will not create a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has fewer than 100 beds. This proposed rule only affects hospices. Therefore, the Secretary has determined that this proposed rule would not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2017, that threshold is approximately $148 million. This proposed rule is not anticipated to have an effect on state, local, or tribal governments, in the aggregate, or on the private sector of $148 million or more.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on state and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed this proposed rule under these criteria of Executive Order 13132, and have determined that it will not impose substantial direct costs on state or local governments.

If regulations impose administrative costs on private entities, such as the time needed to read and interpret this proposed rule, we should estimate the cost associated with regulatory review. Due to the uncertainty involved with accurately quantifying the number of entities that will review the rule, we assume that the total number of unique commenters on last year's proposed rule will be the number of reviewers of this proposed rule. We acknowledge that this assumption may understate or overstate the costs of reviewing this rule. It is possible that not all commenters reviewed last year's rule in detail, and it is also possible that some reviewers chose not to comment on the proposed rule. For these reasons we thought that the number of past commenters would be a fair estimate of the number of reviewers of this rule. We welcome any comments on the approach in estimating the number of entities which will review this proposed rule.

We also recognize that different types of entities are in many cases affected by mutually exclusive sections of this proposed rule, and therefore for the purposes of our estimate we assume that each reviewer reads approximately 50 percent of the rule. We seek comments on this assumption.

Using the wage information from the BLS for medical and health service managers (Code 11–9111), we estimate that the cost of reviewing this rule is $90.16 per hour, including overhead and fringe benefits (*https://www.bls.gov/oes/2015/may/naics4_621100.htm*). Assuming an average reading speed, we estimate that it would take approximately 1.3 hours for the staff to review half of this proposed rule. For each hospice that reviews the rule, the estimated cost is $117.21 (1.3 hours ×

$90.16). Therefore, we estimate that the total cost of reviewing this regulation is $7, 032.60 ($117.21 × 60 reviewers).

D. Detailed Economic Analysis

The proposed FY 2018 hospice payment impacts appear in Table 20. We tabulate the resulting payments according to the classifications in Table 20 (for example, facility type, geographic region, facility ownership), and compare the difference between current and proposed payments to determine the overall impact.

The first column shows the breakdown of all hospices by urban or rural status, census region, hospital-based or freestanding status, size, and type of ownership, and hospice base. The second column shows the number of hospices in each of the categories in the first column.

The third column shows the effect of the annual update to the wage index. This represents the effect of using the proposed FY 2018 hospice wage index. The aggregate impact of this change is zero percent, due to the proposed hospice wage index standardization factor. However, there are distributional effects of the proposed FY 2018 hospice wage index.

The fourth column shows the effect of the proposed hospice payment update percentage for FY 2018. The proposed FY 2018 hospice payment update percentage of 1 percent is mandated by section 1814(i)(1)(C) of the Act, as amended by section 411(d) of the MACRA.

The fifth column shows the effect of all the proposed changes on FY 2018 hospice payments. It is projected that aggregate payments will increase by 1.0 percent, assuming hospices do not change their service and billing practices in response.

As illustrated in Table 20, the combined effects of all the proposals vary by specific types of providers and by location. For example, due to the changes proposed in this rule, the estimated impacts on FY 2018 payments range from a 0.9 percent decrease for hospices providing care in the rural outlying region to a 1.7 percent increase for hospices providing care in the urban Pacific region.

TABLE 20—PROJECTED IMPACT TO HOSPICES FOR FY 2018

(1)	Number of providers (2)	Updated wage data (%) (3)	Proposed FY 2018 hospice payment update (%) (4)	FY 2018 total change (%) (5)
All Hospices	4,295	0.0	1.0	1.0
Urban Hospices	3,323	0.0	1.0	1.0
Rural Hospices	972	0.1	1.0	1.1
Urban Hospices—New England	134	−0.7	1.0	0.3
Urban Hospices—Middle Atlantic	249	0.1	1.0	1.1
Urban Hospices—South Atlantic	429	−0.3	1.0	0.7
Urban Hospices—East North Central	405	−0.1	1.0	0.9
Urban Hospices—East South Central	159	0.0	1.0	1.0
Urban Hospices—West North Central	229	−0.2	1.0	0.8
Urban Hospices—West South Central	648	0.0	1.0	1.0
Urban Hospices—Mountain	315	−0.1	1.0	0.9
Urban Hospices—Pacific	716	0.7	1.0	1.7
Urban Hospices—Outlying	39	−0.6	1.0	0.4
Rural Hospices—New England	23	0.0	1.0	1.0
Rural Hospices—Middle Atlantic	40	0.6	1.0	1.6
Rural Hospices—South Atlantic	134	0.1	1.0	1.1
Rural Hospices—East North Central	140	0.2	1.0	1.2
Rural Hospices—East South Central	124	−0.1	1.0	0.9
Rural Hospices—West North Central	181	0.2	1.0	1.2
Rural Hospices—West South Central	180	0.1	1.0	1.1
Rural Hospices—Mountain	101	0.2	1.0	1.2
Rural Hospices—Pacific	46	0.3	1.0	1.3
Rural Hospices—Outlying	3	−1.9	1.0	−0.9
0—3,499 RHC Days (Small)	960	0.2	1.0	1.2
3,500–19,999 RHC Days (Medium)	2,001	0.1	1.0	1.1
20,000+ RHC Days (Large)	1,334	0.0	1.0	1.0
Non-Profit Ownership	1,058	0.0	1.0	1.0
For Profit Ownership	2,682	0.1	1.0	1.1
Government Ownership	155	−0.3	1.0	0.7
Other Ownership	400	−0.2	1.0	0.8
Freestanding Facility Type	3,323	0.0	1.0	1.0
HHA/Facility-Based Facility Type	972	0.0	1.0	1.0

Source: FY 2016 hospice claims from the Chronic Condition Data Warehouse (CCW) Research Identifiable File (RIF) in January 2017.

Region Key: New England=Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont; Middle Atlantic=Pennsylvania, New Jersey, New York; South Atlantic=Delaware, District of Columbia, Florida, Georgia, Maryland, North Carolina, South Carolina, Virginia, West Virginia; East North Central=Illinois, Indiana, Michigan, Ohio, Wisconsin; East South Central=Alabama, Kentucky, Mississippi, Tennessee; West North Central=Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, South Dakota; West South Central=Arkansas, Louisiana, Oklahoma, Texas; Mountain=Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah, Wyoming; Pacific=Alaska, California, Hawaii, Oregon, Washington; Outlying=Guam, Puerto Rico, Virgin Islands

E. Alternatives Considered

Since the hospice payment update percentage is determined based on statutory requirements, we did not consider not updating hospice payment rates by the payment update percentage. Payment rates since FY 2002 have been updated according to section 1814(i)(1)(C)(ii)(VII) of the Act, which states that the update to the payment rates for subsequent years must be the market basket percentage for that FY. Section 3401(g) of the Affordable Care Act also mandates that, starting with FY 2013 (and in subsequent years), the hospice payment update percentage will be annually reduced by changes in economy-wide productivity as specified in section 1886(b)(3)(B)(xi)(II) of the Act. In addition, section 3401(g) of the Affordable Care Act mandates that in FY 2013 through FY 2019, the hospice payment update percentage will be reduced by an additional 0.3 percentage point (although for FY 2014 to FY 2019, the potential 0.3 percentage point reduction is subject to suspension under conditions specified in section 1814(i)(1)(C)(v) of the Act). For FY 2018, since the hospice payment update percentage is determined based on statutory requirements at section 1814(i)(1)(C) of the Act, as amended by section 411(d) of the MACRA, we cannot consider not updating the hospice payment rates by the hospice payment update percentage, nor can we consider updating the hospice payment rates by the hospice payment update percentage absent the change to section 1814(i)(1)(C) as amended by MACRA.

F. Accounting Statement

As required by OMB Circular A–4 (available at *http://www.whitehouse.gov/omb/circulars/a004/a-4.pdf*), in Table 21, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of this proposed rule. Table 21 provides our best estimate of the possible changes in Medicare payments under the hospice benefit as a result of the policies in this proposed rule. This estimate is based on the data for 4,295 hospices in our impact analysis file, which was constructed using FY 2016 claims available in January 2017. All expenditures are classified as transfers to hospices.

TABLE 21—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED TRANSFERS AND COSTS, FROM FY 2017 TO FY 2018

Category	Transfers
Annualized Monetized Transfers	$ 180 million.*
From Whom to Whom?	Federal Government to Medicare Hospices.

*The net increase of $180 million in transfer payments is a result of the 1.0 percent hospice payment update compared to payments in FY 2017.

G. Reducing Regulation and Controlling Regulatory Costs

Executive Order 13771, titled ''Reducing Regulation and Controlling Regulatory Costs,'' was issued on January 30, 2017 (82 FR 9339, February 3, 2017). Section 2(a) of Executive Order 13771 requires an agency, unless prohibited by law, to identify at least two existing regulations to be repealed when the agency publicly proposes for notice and comment, or otherwise promulgates, a new regulation. In furtherance of this requirement, section 2(c) of Executive Order 13771 requires that the new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations. OMB's implementation guidance, issued on April 5, 2017, explains that ''Federal spending regulatory actions that cause only income transfers between taxpayers and program beneficiaries (for example, Medicare spending) are considered 'transfer rules' and are not covered by EO 13771. . . . However . . . such regulatory actions may impose requirements apart from transfers . . . In those cases, the actions would need to be offset to the extent they impose more than de minimis costs. Examples of ancillary requirements that may require offsets include new reporting or recordkeeping requirements.'' It has been determined that this proposed rule is a transfer rule that does not impose more than de minimis costs as described above and thus is not a regulatory action for the purposes of EO 13771.

H. Conclusion

We estimate that aggregate payments to hospices in FY 2018 would increase by $180 million, or 1.0 percent, compared to payments in FY 2017. We estimate that in FY 2018, hospices in urban and rural areas would experience, on average, 1.0 percent and 1.1 percent increases, respectively, in estimated payments compared to FY 2017. Hospices providing services in the urban Pacific and rural Middle Atlantic regions would experience the largest estimated increases in payments of 1.7 percent and 1.6 percent, respectively. Hospices serving patients in urban areas in the New England region would experience, on average, the lowest estimated increase of 0.3 percent in FY 2018 payments.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

Dated: April 12, 2017.

Seema Verma,

Administrator, Centers for Medicare & Medicaid Services.

Dated: April 17, 2017.

Thomas E. Price,

Secretary, Department of Health and Human Services.

[FR Doc. 2017–08563 Filed 4–27–17; 4:15 pm]

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FEDERAL REGISTER

Vol. 82 Wednesday,
No. 84 May 3, 2017

Part IV

The President

Federal Register
Vol. 82, No. 84
Wednesday, May 3, 2017

Presidential Documents

Title 3—

The President

Proclamation 9595 of April 28, 2017

Asian American and Pacific Islander Heritage Month, 2017

By the President of the United States of America

A Proclamation

This month, we celebrate Asian American and Pacific Islander Heritage Month, and we recognize the achievements and contributions of Asian Americans and Pacific Islanders that enrich our Nation.

Asian Americans and Pacific Islanders have distinguished themselves in the arts, literature, and sports. They are leading researchers in science, medicine, and technology; dedicated teachers to our Nation's children; innovative farmers and ranchers; and distinguished lawyers and government leaders.

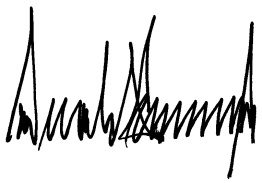
Dr. Sammy Lee, a Korean American who passed away last December, exemplified the spirit of this month. Dr. Lee was the first Asian American man to win an Olympic gold medal, becoming a platform diving champion at the 1948 London Olympics only 1 year after graduating from medical school. To fulfill his dreams, Dr. Lee overcame several obstacles, including his local childhood pool's policy of opening to minorities only once per week. Later in life he was subject to housing discrimination (even after 8 years of military service). Dr. Lee nevertheless tirelessly served his country and community, including by representing the United States at the Olympic Games, on behalf of several Presidents.

Katherine Sui Fun Cheung also embodied the spirit of this month. In 1932, she became the first Chinese American woman to earn a pilot license. At the time, only about 1 percent of pilots in the United States were women. As a member of The Ninety-Nines, an organization of women pilots, she paved the way for thousands of women to take to the skies.

There are more than 20 million Asian Americans and Pacific Islanders in the United States. Each day, through their actions, they make America more vibrant, more prosperous, and more secure. Our Nation is particularly grateful to the many Asian Americans and Pacific Islanders who have served and are currently serving in our Armed Forces, protecting the Nation, and promoting freedom and peace around the world.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim May 2017 as Asian American and Pacific Islander Heritage Month. The Congress, by Public Law 102–450, as amended, has also designated the month of May each year as ''Asian/Pacific American Heritage Month.'' I encourage all Americans to learn more about our Asian American, Native Hawaiian, and Pacific Islander heritage, and to observe this month with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of April, in the year of our Lord two thousand seventeen, and of the Independence of the United States of America the two hundred and forty-first.



[FR Doc. 2017–09073
Filed 5–2–17; 11:15 am]
Billing code 3295–F7–P

Presidential Documents

Proclamation 9596 of April 28, 2017

Jewish American Heritage Month, 2017

By the President of the United States of America

A Proclamation

During Jewish American Heritage Month, we celebrate our Nation's strong American Jewish heritage, rooted in the ancient faith and traditions of the Jewish people. The small band of Dutch Jews who first immigrated in 1654, seeking refuge and religious liberty, brought with them their families, their religion, and their cherished customs, which they have passed on from generation to generation. The moral and ethical code of the Jewish people is inspired by their spiritual vocation of ''tikkun olam''—the charge to repair the world. Through that vocation, the Jewish people have left an indelible mark on American culture. Today, it is manifested in the towering success Jewish people have achieved in America through a unique synthesis of respect for heritage and love of country.

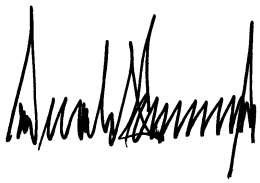
Escaping religious persecution and ethnic violence and seeking political freedom and economic opportunity, American Jews, over centuries, have held firm in the belief that the United States was ''Di Goldene Medina''—the Golden Country. Those who moved here built houses and gardens, raised families, and launched businesses. They have pursued education to advance their mission to make the world a better place. In every aspect of the country's cultural, spiritual, economic, and civic life, American Jews have stood at the forefront of the struggles for human freedom, equality, and dignity, helping to shine a light of hope to people around the globe.

The achievements of American Jews are felt throughout American society and culture, in every field and in every profession. American Jews have built institutions of higher learning, hospitals, and manifold cultural and philanthropic organizations. American Jews have even brought us our greatest superheroes—Captain America, Superman, and Batman. American Jews have composed some of our defining national hymns like *God Bless America,* timeless musicals like *The Sound of Music,* and even famous Christmas songs. From Admiral Hyman G. Rickover to Albert Einstein, Richard Rodgers to Irving Berlin, Jerry Siegel to Bill Finger, Mel Brooks to Don Rickles, and Levi Strauss to Elie Wiesel, American Jews have transformed all aspects of American life and continue to enrich the American spirit.

This month, I celebrate with my family—including my daughter, Ivanka, my son-in-law, Jared, my grandchildren, and our extended family—the deep spiritual connection that binds, and will always bind, the Jewish people to the United States and its founding principles. We recognize the faith and optimism exemplified by American Jews is what truly makes America ''The Golden Country,'' and we express our Nation's gratitude for this great, strong, prosperous, and loving people.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim May 2017 as Jewish American Heritage Month. I call upon all Americans to celebrate the heritage and contributions of American Jews and to observe this month with appropriate programs, activities, and ceremonies.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of April, in the year two thousand seventeen, and of the Independence of the United States of America the two hundred and forty-first.



[FR Doc. 2017–09074
Filed 5–2–17; 11:15 am]
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Presidential Documents

Proclamation 9597 of April 28, 2017

National Foster Care Month, 2017

By the President of the United States of America

A Proclamation

During the month of May, we observe National Foster Care Month and we celebrate those who have opened their homes and their hearts to children in need and those who have devoted their careers to serving America's foster youth.

Americans throughout the country are serving their communities as foster parents, mentors, respite care providers, and volunteers. In the last year alone, America's foster families opened their homes and hearts to more than 300,000 young people.

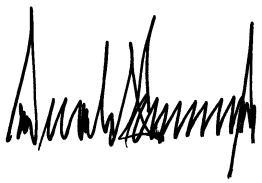
But we can do more. Every child deserves a safe and supportive family. Ensuring that children grow up with the opportunity to reach their full potential is a top priority of my Administration. For thousands of children whose biological families are unable to support them, foster families provide a secure and nurturing environment that is essential for a successful start in life.

Foster families serve young people from all walks of life, from infants awaiting adoption, to children seeking reunification with their families and teens in need of safe havens from negative influences. In many cases, they offer our Nation's most at-risk children a second chance at the American Dream.

A tremendous demand exists for foster parents and families across the country. Together as a Nation, we must raise awareness about this need and inspire volunteers to step forward and invest in the lives of our Nation's youth through our foster care system.

NOW, THEREFORE, I, Donald J. Trump, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim May 2017 as National Foster Care Month. I call upon all Americans to observe this month by taking time to help children and youth in foster care and to recognize the commitment of those who touch their lives, particularly celebrating their foster parents and other caregivers.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of April, in the year of our Lord two thousand seventeen, and of the Independence of the United States of America the two hundred and forty-first.



[FR Doc. 2017–09075
Filed 5–2–17; 11:15 am]
Billing code 3295–F7–P

Presidential Documents

Proclamation 9598 of April 28, 2017

National Physical Fitness and Sports Month, 2017

By the President of the United States of America

A Proclamation

During National Physical Fitness and Sports Month, we remind Americans of all ages and backgrounds that maintaining a healthy and active lifestyle is critical to long-term physical and mental well-being, productivity, and quality of life. We also highlight the close relationship between sports and physical fitness and the benefits related to participation in sports, including disease prevention, lessons in teamwork and leadership, and the practice of overcoming adversity. In addition to their physical health benefits, sports promote positive mentoring, discipline, and structure for young Americans.

In 1956, President Dwight D. Eisenhower formed the President's Council on Youth Fitness, demonstrating a national commitment to improving health and physical fitness. President Eisenhower's legacy lives on today in the form of the President's Council on Fitness, Sports, and Nutrition, which advises me on health and fitness and engages with communities across the country to improve youth fitness and empower Americans to adopt healthy lifestyles that include regular physical activity and good nutrition. My Administration will continue this tradition, with a particular focus on promoting sports and physical fitness among our youth.

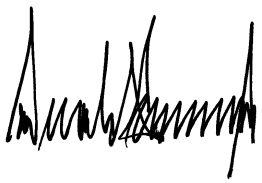
As we each work to maintain our own physical fitness, we play a part in building a stronger and healthier America. Failure to engage in physical activity contributes to serious negative health outcomes, including obesity and diseases such as type 2 diabetes, and an increased risk of heart disease, the number one cause of death in America. Complications from these health problems often impact quality of life and frequently lead to other related and debilitating conditions.

As we celebrate National Physical Fitness and Sports Month, let us commit ourselves to celebrating active lifestyles, promoting physical fitness, and tackling public health issues together by making healthier choices. Let us rededicate ourselves each day to childhood obesity prevention, and recognize the role that sports can play in our Nation's health and well-being. Throughout May, I encourage all Americans to eat nutritious food, to take more time each day to be active, and to inspire friends, family, peers, and loved ones to do the same.

Finally, the Americans who serve our Nation's youth through sports and other physical activities deserve our collective appreciation. Whether through coaching, driving kids to and from practice, or organizing the leagues and events that make sport competitions possible, these Americans make countless unseen sacrifices that merit special recognition.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim May 2017, as National Physical Fitness and Sports Month. I call upon the people of the United States to make physical activity and sports participation a priority in their lives.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of April, in the year of our Lord two thousand seventeen, and of the Independence of the United States of America the two hundred and forty-first.



[FR Doc. 2017–09076
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Presidential Documents

Proclamation 9599 of April 28, 2017

Older Americans Month, 2017

By the President of the United States of America

A Proclamation

Older Americans are our Nation's memory. Some of today's grandparents and great-grandparents were born during the Great Depression, lived through the Second World War, witnessed the rise and fall of Communism, fought in Korea and Vietnam, marched with Martin Luther King, Jr., and watched the first man walk on the Moon. Now, they surf the internet and share family photos on their phones in a world that is richer and freer than the one into which they were born. Listening to the stories of our older citizens allows younger Americans to appreciate the country they inherited and gain the wisdom necessary to make it even better for their children and grandchildren.

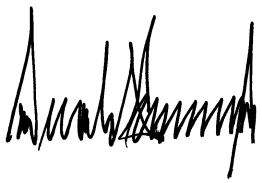
As we celebrate Older Americans Month, we take the opportunity to thank our seniors and recognize the enormous contributions they make to the Nation. Indeed, one of modern life's greatest blessings are the medical advancements that make it possible for older people to remain healthy and active well into the later stages of life. We are blessed to have their presence, their love, and their unmatched perspective for our families.

Our elders also have an unprecedented opportunity to make a difference in our communities by sharing their talents, wisdom, and time. America's seniors give back in a myriad of ways, working with children in our schools, providing assistance to the sick and shut-in, and inventing new and innovative products. They have made our Nation stronger through their experience, knowledge, and willingness to share with others.

Finally, during this month we also recognize that, as we age, many of us will need more assistance from our friends and family. We therefore recommit ourselves to ensuring that older Americans are not neglected or abused, receive the best healthcare available, live in suitable homes, have adequate income and economic opportunities, and enjoy freedom and independence in their golden years. They deserve—and we owe them—nothing less.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim May 2017 as Older Americans Month. I call upon all Americans to honor our elders, acknowledge their contributions, care for those in need, and reaffirm our country's commitment to older Americans this month and throughout the year.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of April, in the year of our Lord two thousand seventeen, and of the Independence of the United States of America the two hundred and forty-first.



[FR Doc. 2017–09077
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Presidential Documents

Proclamation 9600 of April 28, 2017

National Charter Schools Week, 2017

By the President of the United States of America

A Proclamation

During National Charter Schools Week, we recommit ourselves to empowering students and giving parents their rightful freedom over their children's education. We recognize the successful public charter schools across the country and the families, teachers, administrators, and communities who continue to invest in our Nation's most precious resource—our children.

More than 25 years ago, an idea took root: educators free of restrictive processes and policies, and empowered to experiment with new teaching methods, would generate better outcomes for students. Charter schools are built around this idea. Like traditional public schools, they are tuition-free, but they operate independently from traditional school boards and, in exchange, are held accountable by local authorizers to standards that are often more demanding.

Education is the foundation for success, and educational opportunity should not be limited or defined by status, income, or residence. All children deserve access to a quality education. When our children receive a rigorous education and are held to high standards, they can achieve their goals, rise out of poverty, and actively engage in our democracy.

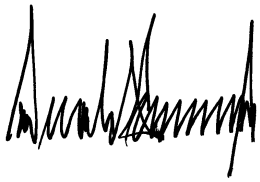
For too long, however, students across this country have been trapped in failing or underperforming schools simply because of their zip code. The Washington one-size-fits-all approach has not worked for far too many of our children. Fortunately, we have seen how allowing families the freedom to choose other schooling options—including charter schools—delivers life-changing results.

Today, 44 States and the District of Columbia have laws that allow for charter schools, which enroll more than 3 million students. The demand for charter schools only continues to grow: a recent study showed that at least 70 percent of parents favor opening a charter school in their neighborhood. This is because charter schools work. According to Stanford University's Center for Research on Education Outcomes study, students in urban charter schools, on average, achieve significantly greater outcomes in both reading and math. This is why I have called upon the Congress to increase funding for charter schools as well as school choice programs for disadvantaged youth, which would include millions of African American and Latino children. Under the leadership of Secretary of Education Betsy DeVos, we will expand charter school options for students throughout the United States.

As Americans, we have an abiding conviction that our next generation's future should be even brighter than ours. Education provides the staircase out of poverty, toward a fulfilling life of work and service, and a true shot at the American Dream. We want every student—from New Orleans to Kansas City, from Houston to Detroit, and every city and town in between—to rise to success. Charter schools have tremendous potential to offer students around the country the priceless gift of possibility. As a Nation, we should support the continued success of charter schools and hold our students up to the high standards they are all capable of achieving.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim April 30 through May 6, 2017, as National Charter Schools Week. I commend our Nation's successful public charter schools, teachers, and administrators, and I call on States and communities to empower parents and families by supporting high-quality charter schools as an important school choice option.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of April, in the year of our Lord two thousand seventeen, and of the Independence of the United States of America the two hundred and forty-first.



[FR Doc. 2017–09078
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Presidential Documents

Proclamation 9601 of April 28, 2017

Small Business Week, 2017

By the President of the United States of America

A Proclamation

During Small Business Week, we celebrate our Nation's small business owners, whose entrepreneurship and hard work bring jobs and prosperity to our communities. Small business owners embody the American pioneering spirit and remind us that determination can turn aspiration into achievement. This week, we affirm our commitment to removing government barriers to the success of American small businesses.

Small businesses are an economic force in this country, and have grown by nearly 40 percent since 1982 despite often facing regulatory headwinds. They employ almost 58 million Americans, accounting for about 50 percent of all private-sector jobs in the United States. Our communities depend on the success of small businesses. More than 99 percent of all employer firms in the country are small businesses and in recent years, too many of them have been crushed by overwhelming Federal regulations. At the beginning of my Administration, I met with small business owners who continue to struggle under too many burdensome regulations. I have already signed legislation disapproving many excessive and unreasonable regulations and issued several Executive Orders to address other overreaching rules. These actions will free our Nation's entrepreneurs to spend more time creating jobs and less time navigating the Federal bureaucracy.

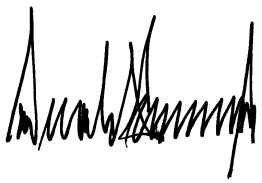
My Administration is also working to ensure our Nation's trade deals establish favorable conditions for small businesses to export their goods and services. With a level playing field on the international stage, America's small businesses will lead an export revival that brings jobs and wealth back to our country.

Our Nation also deserves a tax system that works for—not against—small business owners. One of the biggest problems facing our small businesses is an unduly complicated, and often unfair, tax system. Tax reform will unleash a new wave of investment, innovation, and entrepreneurship in our country. Americans will keep more money in their pockets, leaving them with the resources they need to expand their businesses and hire more workers.

America's small business owners transform ideas into reality. They are a strong testament to the opportunities a market economy affords. During this week, we recognize the incredible contributions small businesses make to our country and pledge to foster the conditions that enable them to prosper and thrive.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim April 30 through May 6, 2017, as Small Business Week. I call upon all Americans to recognize the critical contributions of America's entrepreneurs and small business owners as they grow our Nation's economy.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of April, in the year of our Lord two thousand seventeen, and of the Independence of the United States of America the two hundred and forty-first.



[FR Doc. 2017–09079
Filed 5–2–17; 11:15 am]
Billing code 3295–F7–P

Presidential Documents

Proclamation 9602 of April 28, 2017

Loyalty Day, 2017

By the President of the United States of America

A Proclamation

On Loyalty Day, we recognize and reaffirm our allegiance to the principles upon which our Nation is built. We pledge our dedication to the United States of America and honor its unique heritage, reminding ourselves that we are one Nation, under God, made possible by those who have sacrificed to defend our liberty. We honor our Republic and acknowledge the great responsibility that self-governance demands of each of us.

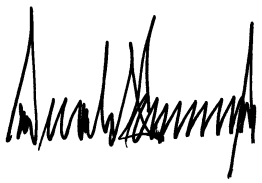
The United States stands as the world's leader in upholding the ideals of freedom, equality, and justice. Together, and with these fundamental concepts enshrined in our Constitution, our Nation perseveres in the face of those who would seek to harm it.

As one Nation, we will always stand strong against the threats of terrorism and lawlessness. The loyalty of our citizenry sends a clear signal to our allies and enemies that the United States will never yield from our way of life. Through the Department of Defense and other national security agencies, we are working to destroy ISIS, and to secure for all Americans the liberty terrorists seek to extinguish. We humbly thank our brave service members and veterans who have worn our Nation's uniform—from the American Revolution to the present day. Their unwavering loyalty and fidelity has made the world a safer, more free, and more just place. We are inspired by their pride in our country's principles, their devotion to our freedom, and their solemn pledge to protect and defend our Constitution against all enemies, foreign and domestic.

To express our country's loyalty to individual liberties, to limited government, and to the inherent dignity of every human being, the Congress, by Public Law 85–529 as amended, has designated May 1 of each year as ''Loyalty Day.'' On this day, we honor the United States of America and those who uphold its values, particularly those who have fought and continue to fight to defend the freedom it affords us.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, do hereby proclaim May 1, 2017, as Loyalty Day. This Loyalty Day, I call on all Americans to observe this day with appropriate ceremonies in our schools and other public places, including recitation of the Pledge of Allegiance to the Flag of the United States of America. I also call upon all Government officials to display the flag of the United States on all Government buildings and grounds on that day.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of April, in the year of our Lord two thousand seventeen, and of the Independence of the United States of America the two hundred and forty-first.



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Presidential Documents

Executive Order 13794 of April 28, 2017

Establishment of the American Technology Council

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Policy.* It is the policy of the United States to promote the secure, efficient, and economical use of information technology to achieve its missions. Americans deserve better digital services from their Government. To effectuate this policy, the Federal Government must transform and modernize its information technology and how it uses and delivers digital services.

Sec. 2. *Purpose.* To promote the policy set forth in section 1 of this order, this order establishes the American Technology Council (ATC).

Sec. 3. *ATC Establishment and Membership.* The ATC is hereby established, with the following members:

(a) The President, who shall serve as Chairman;

(b) The Vice President;

(c) The Secretary of Defense;

(d) The Secretary of Commerce;

(e) The Secretary of Homeland Security;

(f) The Director of National Intelligence;

(g) The Director of the Office of Management and Budget (OMB);

(h) The Director of the Office of Science and Technology Policy;

(i) The U.S. Chief Technology Officer;

(j) The Administrator of General Services;

(k) The Senior Advisor to the President;

(l) The Assistant to the President for Intragovernmental and Technology Initiatives;

(m) The Assistant to the President for Strategic Initiatives;

(n) The Assistant to the President for National Security Affairs;

(o) The Assistant to the President for Homeland Security and Counterterrorism;

(p) The Administrator of the U.S. Digital Service;

(q) The Administrator of the Office of Electronic Government (Federal Chief Information Officer);

(r) The Commissioner of the Technology Transformation Service; and

(s) The Director of the American Technology Council (Director).

Sec. 4. *Additional Invitees.* The Director may invite the heads of agencies with key service delivery programs to attend meetings of the ATC on a rotating basis and may also invite the heads of those service delivery programs to attend. The President, or upon his direction, the Director, may also invite other officials of executive departments, agencies, and offices to attend meetings of the ATC from time to time.

Sec. 5. *ATC Meetings.* The President, or upon his direction, the Director, may convene meetings of the ATC. The President shall preside over the

meetings. In the President's absence the Vice President shall preside, and in the Vice President's absence the Director shall preside.

Sec. 6. *ATC Functions.* (a) The principal functions of the ATC shall be to:

(i) coordinate the vision, strategy, and direction for the Federal Government's use of information technology and the delivery of services through information technology;

(ii) coordinate advice to the President related to policy decisions and processes regarding the Federal Government's use of information technology and the delivery of services through information technology; and

(iii) work to ensure that these decisions and processes are consistent with the policy set forth in section 1 of this order and that the policy is being effectively implemented.

(b) The functions of the ATC, as specified in subsection (a) of this section, shall not extend to any national security system, as defined in section 3552(b)(6) of title 44, United States Code.

(c) Nothing in this section shall be construed to impair or otherwise affect the authority of any agency or of OMB, including the authority of OMB to monitor implementation of Administration policies and programs and to develop and implement management policies for all agencies.

Sec. 7. *ATC Administration.* (a) The ATC may function through ad hoc committees, task forces, or interagency groups, each to be chaired by the Director or such official as the Director may, from time to time, designate. Such groups shall include a senior interagency forum for considering policy issues related to information technology, and a deputies committee to review and monitor the work of the ATC interagency forum and to ensure that issues brought before the ATC have been properly analyzed and prepared for decision.

(b) The ATC shall have a Director, who shall be an employee of the Executive Office of the President designated by the President.

(c) All agencies are encouraged to cooperate with the ATC and to provide such assistance, information, and advice to the ATC as the ATC may request, to the extent permitted by law.

(d) Consistent with the protection of sources and methods, the Director of National Intelligence is encouraged to provide access to classified information on cybersecurity threats, vulnerabilities, and mitigation procedures to the ATC in order to facilitate the ATC's activities.

Sec. 8. *Termination.* This order, and the ATC established hereunder, shall terminate on January 20, 2021.

Sec. 9. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

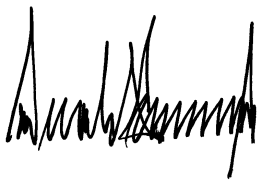
(i) the authority granted by law to an executive department or agency, or the head thereof;

(ii) the functions of the Director of OMB relating to budgetary, administrative, or legislative proposals; or

(iii) the provisions of the Presidential Memorandum of March 19, 2015, entitled ''Establishing the Director of White House Information Technology and the Executive Committee for Presidential Information Technology.''

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
April 28, 2017.

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Filed 5–2–17; 11:15 am]
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Federal Register
Vol. 82, No. 84
Wednesday, May 3, 2017

Presidential Documents

Executive Order 13795 of April 28, 2017

Implementing an America-First Offshore Energy Strategy

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Outer Continental Shelf Lands Act, 43 U.S.C. 1331 *et seq.,* and in order to maintain global leadership in energy innovation, exploration, and production, it is hereby ordered as follows:

Section 1. *Findings.* America must put the energy needs of American families and businesses first and continue implementing a plan that ensures energy security and economic vitality for decades to come. The energy and minerals produced from lands and waters under Federal management are important to a vibrant economy and to our national security. Increased domestic energy production on Federal lands and waters strengthens the Nation's security and reduces reliance on imported energy. Moreover, low energy prices, driven by an increased American energy supply, will benefit American families and help reinvigorate American manufacturing and job growth. Finally, because the Department of Defense is one of the largest consumers of energy in the United States, domestic energy production also improves our Nation's military readiness.

Sec. 2. *Policy.* It shall be the policy of the United States to encourage energy exploration and production, including on the Outer Continental Shelf, in order to maintain the Nation's position as a global energy leader and foster energy security and resilience for the benefit of the American people, while ensuring that any such activity is safe and environmentally responsible.

Sec. 3. *Implementing an America-First Offshore Energy Strategy.* To carry out the policy set forth in section 2 of this order, the Secretary of the Interior shall:

(a) as appropriate and consistent with applicable law, including the procedures set forth in section 1344 of title 43, United States Code, in consultation with the Secretary of Defense, give full consideration to revising the schedule of proposed oil and gas lease sales, as described in that section, so that it includes, but is not limited to, annual lease sales, to the maximum extent permitted by law, in each of the following Outer Continental Shelf Planning Areas, as designated by the Bureau of Ocean Energy Management (BOEM) (Planning Areas): Western Gulf of Mexico, Central Gulf of Mexico, Chukchi Sea, Beaufort Sea, Cook Inlet, Mid-Atlantic, and South Atlantic;

(b) ensure that any revisions made pursuant to subsection (a) of this section do not hinder or affect ongoing lease sales currently scheduled as part of the 2017–2022 Outer Continental Shelf Oil and Gas Leasing Proposed Final Program, as published on November 18, 2016; and

(c) develop and implement, in coordination with the Secretary of Commerce and to the maximum extent permitted by law, a streamlined permitting approach for privately funded seismic data research and collection aimed at expeditiously determining the offshore energy resource potential of the United States within the Planning Areas.

Sec. 4. *Responsible Planning for Future Offshore Energy Potential.* (a) The Secretary of Commerce shall, unless expressly required otherwise, refrain from designating or expanding any National Marine Sanctuary under the National Marine Sanctuaries Act, 16 U.S.C. 1431 *et seq.,* unless the sanctuary designation or expansion proposal includes a timely, full accounting from the Department of the Interior of any energy or mineral resource potential

within the designated area—including offshore energy from wind, oil, natural gas, methane hydrates, and any other sources that the Secretary of Commerce deems appropriate—and the potential impact the proposed designation or expansion will have on the development of those resources. The Secretary of the Interior shall provide any such accounting within 60 days of receiving a notification of intent to propose any such National Marine Sanctuary designation or expansion from the Secretary of Commerce.

(b) The Secretary of Commerce, in consultation with the Secretary of Defense, the Secretary of the Interior, and the Secretary of Homeland Security, shall conduct a review of all designations and expansions of National Marine Sanctuaries, and of all designations and expansions of Marine National Monuments under the Antiquities Act of 1906, recently recodified at sections 320301 to 320303 of title 54, United States Code, designated or expanded within the 10-year period prior to the date of this order.

(i) The review under this subsection shall include:

(A) an analysis of the acreage affected and an analysis of the budgetary impacts of the costs of managing each National Marine Sanctuary or Marine National Monument designation or expansion;

(B) an analysis of the adequacy of any required Federal, State, and tribal consultations conducted before the designations or expansions; and

(C) the opportunity costs associated with potential energy and mineral exploration and production from the Outer Continental Shelf, in addition to any impacts on production in the adjacent region.

(ii) Within 180 days of the date of this order, the Secretary of Commerce, in consultation with the Secretary of Defense and the Secretary of the Interior, shall report the results of the review under this subsection to the Director of the Office of Management and Budget, the Chairman of the Council on Environmental Quality, and the Assistant to the President for Economic Policy.

(c) To further streamline existing regulatory authorities, Executive Order 13754 of December 9, 2016 (Northern Bering Sea Climate Resilience), is hereby revoked.

Sec. 5. *Modification of the Withdrawal of Areas of the Outer Continental Shelf from Leasing Disposition.* The body text in each of the memoranda of withdrawal from disposition by leasing of the United States Outer Continental Shelf issued on December 20, 2016, January 27, 2015, and July 14, 2008, is modified to read, in its entirety, as follows:

''Under the authority vested in me as President of the United States, including section 12(a) of the Outer Continental Shelf Lands Act, 43 U.S.C. 1341(a), I hereby withdraw from disposition by leasing, for a time period without specific expiration, those areas of the Outer Continental Shelf designated as of July 14, 2008, as Marine Sanctuaries under the Marine Protection, Research, and Sanctuaries Act of 1972, 16 U.S.C. 1431–1434, 33 U.S.C. 1401 *et seq.*''

Nothing in the withdrawal under this section affects any rights under existing leases in the affected areas.

Sec. 6. *Reconsideration of Notice to Lessees and Financial Assurance Regulatory Review.* The Secretary of the Interior shall direct the Director of BOEM to take all necessary steps consistent with law to review BOEM's Notice to Lessees No. 2016–N01 of September 12, 2016 (Notice to Lessees and Operators of Federal Oil and Gas, and Sulfur Leases, and Holders of Pipeline Right-of-Way and Right-of-Use and Easement Grants in the Outer Continental Shelf), and determine whether modifications are necessary, and if so, to what extent, to ensure operator compliance with lease terms while minimizing unnecessary regulatory burdens. The Secretary of the Interior shall also review BOEM's financial assurance regulatory policy to determine the extent to which additional regulation is necessary.

Sec. 7. *Reconsideration of Well Control Rule.* The Secretary of the Interior shall review the Final Rule of the Bureau of Safety and Environmental

Enforcement (BSEE) entitled ''Oil and Gas and Sulfur Operations in the Outer Continental Shelf-Blowout Preventer Systems and Well Control,'' 81 *Fed. Reg.* 25888 (April 29, 2016), for consistency with the policy set forth in section 2 of this order, and shall publish for notice and comment a proposed rule revising that rule, if appropriate and as consistent with law. The Secretary of the Interior shall also take all appropriate action to lawfully revise any related rules and guidance for consistency with the policy set forth in section 2 of this order. Additionally, the Secretary of the Interior shall review BSEE's regulatory regime for offshore operators to determine the extent to which additional regulation is necessary.

Sec. 8. *Reconsideration of Proposed Offshore Air Rule.* The Secretary of the Interior shall take all steps necessary to review BOEM's Proposed Rule entitled ''Air Quality Control, Reporting, and Compliance,'' 81 *Fed. Reg.* 19718 (April 5, 2016), along with any related rules and guidance, and, if appropriate, shall, as soon as practicable and consistent with law, consider whether the proposed rule, and any related rules and guidance, should be revised or withdrawn.

Sec. 9. *Expedited Consideration of Incidental Harassment Authorizations, Incidental-Take, and Seismic Survey Permits.* The Secretary of the Interior and the Secretary of Commerce shall, to the maximum extent permitted by law, expedite all stages of consideration of Incidental Take Authorization requests, including Incidental Harassment Authorizations and Letters of Authorization, and Seismic Survey permit applications under the Outer Continental Shelf Lands Act, 43 U.S.C. 1331 *et seq.,* and the Marine Mammal Protection Act, 16 U.S.C. 1361 *et seq*.

Sec. 10. *Review of National Oceanic and Atmospheric Administration (NOAA) Technical Memorandum NMFS–OPR–55.* The Secretary of Commerce shall review NOAA's Technical Memorandum NMFS–OPR–55 of July 2016 (Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing) for consistency with the policy set forth in section 2 of this order and, after consultation with the appropriate Federal agencies, take all steps permitted by law to rescind or revise that guidance, if appropriate.

Sec. 11. *Review of Offshore Arctic Drilling Rule.* The Secretary of the Interior shall immediately take all steps necessary to review the Final Rule entitled ''Oil and Gas and Sulfur Operations on the Outer Continental Shelf—Requirements for Exploratory Drilling on the Arctic Outer Continental Shelf,'' 81 *Fed. Reg.* 46478 (July 15, 2016), and, if appropriate, shall, as soon as practicable and consistent with law, publish for notice and comment a proposed rule suspending, revising, or rescinding this rule.

Sec. 12. *Definition.* As used in this order, ''Outer Continental Shelf Planning Areas, as designated by the Bureau of Ocean Energy Management'' means those areas delineated in the diagrams on pages S–5 and S–8 of the 2017–2022 Outer Continental Shelf Oil and Gas Leasing Draft Proposed Program, as published by the BOEM in January 2015, with the exception of any buffer zones included in such planning documents.

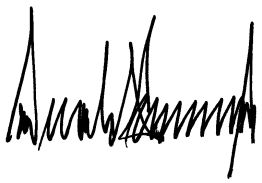
Sec. 13. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
April 28, 2017.

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